There is a distinction, however, between the acts done by the Ruler in his capacity as the head of his State and the acts done as an individual person. He is not personally liable for anything done by him as the head of his Government, but if he commits any offence in his personal capacity, he is accountable for his acts before the Paramount Power. But in actual practice, it has been found that the actions taken by the Paramount Power against the personal or the administrative acts of a Ruler are not easily distinguishable. The most imporant example of the curtailment of the powers of a Ruler without implicating him for any offence, in his individual capacity is the case of late Maharana Fateh Singhji of Udaipur, where the only reason given was that there were various administrative deficiencies requiring urgent attention, which the old age of the Maharana prevented him from giving. In the Bharatpur case, the administrative responsibility of the Maharaja for the financial bankruptcy of the State was mixed up with personal responsibility of the Ruler for the acts of a favourite. In the Nabha case, the charge was the active connivance of the Ruler with the gross misuse of the judicial machinery of the State. Some of the important cases where the Rulers have been charged with acts involving personal responsibity are relating to the States of Baroda, Aundh, Indore and Rewa. In the Baroda

case an attempt was made on November 9, 1874 to poison the Resident by means of arsenic administered in some fruit juice A Proclamation was issued on January 13, 1875 and the Baroda Commission, consisting of Sir Richard Couch, Sir Richard Meade, Mr P C Melville, Sir Dinkar Rao, Maharaja Scindia the Maharaja of Jeypore, and the Maharaja Holkar, was appointed to try the charges and report to the Government of India The three Europeans found the Gaekwar guilty, the Maharaja Scindia and Sir Dinkar Rao found the graver imputation not proved, the Maharaja of Jeypore found the Gaekwar not guilty, and the Maharaja Holkar had excused himself from serving on the Commission The charge was not proved, yet by a Proclamation dated April 19, 1875, the Gaekwar was deposed and the widow of the late Khande Rao—H H Jumnabai was permitted to adopt a boy of the Gaekwar House selected by the British Government In his Dispatch No 69 dated June 3, 1875, to the Governor General in Council the Secretary of State said

'Incorrigible misrule is of itself a sufficient disqualification for sovereign power His Majesty's Government have willingly accepted the opportunity of recognizing in a conspicuous case the paramount obligation which lies upon them of protecting the people of India from oppression'

In 1906 Gopal Krishna Rao, the Chief of

Aundh was accused of murder and dacoity, the case was investigated by special tribunal and the Pritinidhi was suspended for 5 years and later deposed in 1909.

In the Indore case, some of the men connected with Indore Administration were found responsible for a sensational murder committed in one of the thorough-fares of Bombay. The Government of India demanded that an inquiry should be made into the whole case to find out the personal responsibility of the Ruler. The Indore Maharaja elected to abdicate rather than face an inquiry by a commission.

The unsatisfactory methods of determining responsibility of the Rulers for the crimes in their States has been a source of friction between the States and the Government of India. This matter has been discussed in Chapter X of the Montague Chelmsford Report and a Government Resolution was then issued in 1920 on this subject.

The Government Resolution No. 426-R dated 29th October 1920 (Appendix A) provides for the appointment of commission of enquiry against Indian Princes in cases of alleged crime by the Rulers of Indian States. It lays down that the composition of the commission will ordinarily include (a) A Judicial Officer not lower in rank than a Judge of a Chartered High Court of Judicature in British India (b) Four persons of high status of whom not

less than two will be Ruling Princes The recent commission appointed against the Maharaja of Rewa consists of two Ruling Princes His Highness the Nawab of Rampur and His Highness of Jhalawar, two Judges of the High Court one of whom is the chairman and a representative of the Political Department of the Government of India

The majority of the members on the Commission absolved His Highness the Maharaja of Rewa of all the charges brought against him, but the Crown Representative did not accept the findings and recommendations of the Commission and held that although certain charges were not judicially proved it was clear that the administration of law and justice in the State was not regular that it was interfered with and influenced by the Ruler and that His Highness transferred large amounts of money from the State to an account under personal control of His Highness The Crown Representative therefore came to the conclusion that His Highness could be allowed to go back to the State if he agreed to certain conditions laid down by the Crown Representative, such as, the appointment of the Chief Minister and the Inspector General of Police to be made by the Political Agent, and in cases of difference between the State Council and the Ruler, the matter should be referred to the Political Agent

It was felt that this Resolution does not in

terms authorise the withdrawal of a Ruler from the State or the suspension of his powers during the course of the enquiry. The provision in the Resolution which is interpreted to authorise interim action runs as follows—"Nothing in this Resolution will be held to affect the discretion of the Government of India or of the local Government to take such immediate action, as the circumstances may require, in the case of grave danger to the public safety." In 1932, it was proposed to amend the Government Resolution so as to make clear provision for the suspension of the powers of a Ruler, or his absence from the State during the enquiry. Such an amendment is bound to be prejudicial to the equitable prosecution of the enquiry as the temporary suspension of powers of the Ruler concerned, or his absence from the State during the enquiry would disable him effectively to prepare his defence. On the otherhand, it is claimed on behalf of the Government of India that the Resolution on this subject lays down the procedure only in regard to the commission of enquiry, and that before the appointment of the commission itself, the Government of India have the right and the discretion to suspend the powers of a Ruler or to ask him to withdraw from the State. The presence of a Ruler in the State, it is argued by the Government of India may also practically nullify the enquiry as it will

be impossible to collect evidence against him

This matter is of vital importance and it would doubtless be appreciated that any procedure or action on the part of the Paramount Power which tends to lower the prestige of a Ruler or to undermine the loyalty of his people to the dynasty would seriously affect the utility of the Indian States in the polity of the Empire

Lord Curzon in his Leaves from a Viceroy's Note Book page 41, says, 'In case of flagrant misdemeanour or crime, the Viceroy retains on behalf of the Paramount Power, the unalienable prerogative of deposition though it is only with extreme reluctance and after the fullest inquiry and consultation with the Secretary of State that he would decide to exercise it

The Government in passing the final order may or may not adopt the recommendations or findings of the commission

If the person affected by the order is aggrieved, his only remedy is by a memorial to the higher Political Authority He has no remedy in the criminal court against his conviction, if unjust, for this being an Act of State, the Municipal courts have no jurisdiction to enquire into or judge of its propriety or correctness

The relations between the Paramount Power and the Rulers of Indian States are thus called Act

of State incapable of being questioned or enquired into by any Municipal courts as such courts have neither the means of deciding which is right nor the power of enforcing any decision which they may make. In the Secretary of State of, India Vs Camchee Bai Sahiba (1859) it has been held that the Raja of Tanjore being an independent sovereign of territories bound by treaties to a powerful neighbour, his transactions with the British Government are acts of State over which the Supreme Court of Madras had no jurisdiction. This principle has also been sufficiently established in the cases of the Nawab of Arcot Vs. The East India Company in the Court of Chancery in the year 1793 and the East Indian? Company Vs. Syed Ally before the Privy Council in 1827. In the case regarding Maharaj Madhav Singh of Panna (6 Bombay L.R. 763 P. C.), Lord Davey has held that the Act of the Governor General of India in removing the appellant from the Government of the State of Panna was undoubtedly a Political act—an act of State done by the Viceroy in Council in the interest of the State of Panna and the inhabitants of Panna and for the Peace and good Government of India generally. It is further remarked that "Their Lordships are precluded by a long series of authority and by well established principles from entertaining a petition for leave to appeal against an act of that character—

The commission in question was one appointed by the Viceroy himself for the information of his own mind in order that he should not act in his political and Sovereign character, otherwise than in accordance with the dictates of justice and equity and was not in any sense a court or, if a court, was not a court from which an appeal lies to His Majesty in Council"

Thus a Ruling Prince of an Indian State is not amenable to the jurisdiction of the British courts at all, even when a ruler has ceased to enjoy the status of a Ruling Prince, as has been held in Sowkabai Rajpukar Vs the ex-Maharaja of Indore The ex-Maharaja of Indore was sued for wrongful restraint, but the Bombay High Court held that no cause of action lay as they were the acts of a sovereign Prince, committed during the time when he enjoyed such status In A I R 1933 Nagpur 226 (Dewan Singh Vs Mohd Akram) His Highness the Nawab of Bhopal, who is a sovereign in his own State, was held to be entitled to immunity, as a general privilege, from any process, criminal or civil, which the British Courts are empowered to issue. Under the common law of England also, the British court declined to exercise the territorial jurisdiction over the person of any sovereign or Ambassador of any other State (see the Parelement Belge 5 Probate Division 197) The reason obviously is that a foreign Prince is not understood as intending to subject

himself to jurisdiction imcompatible with his dignity and the dignity of his nation The same view was taken in Mighell Vs. Sultan of Johore 1. Q.B 149 and Duff Development Company Vs. Kelantan Government (1924-AC. 797).

It appears that the immunity enjoyed by the Indian Rulers from criminal jurisdiction does not specifically apply in the case of a consort of the Ruler, although wives of Ambassadors are understood to be entitled to such immunity. This point, with regard to the Indian States, has not been the subject of any judicial discussion so far. Dicey, however, lays down on this point as follows :—

"There is no authority to extend this immunity to the suite or family of a Monarch, but technically it might apply. Sovereigns, of course, only pay visits of limited duration and the issue is not likely to arise."

British Courts have also no authority to order for the examination of any Indian Prince on commision u/s 503 (2) Cr. P. C. In the Nagpur Case (Dewan Singh Vs. Mohd Akram) His Lordship relied on Mohd. Yusuf Uddin Vs. Q. E. 27 I. A. 137 in holding that the authority to execute any criminal process must be derived in some way or another from the sovereign of that territory, where the person to be proceeded against resides as a subject of the State. His Lordship further observed,

"It is contended that mere issue of a commission to examine the Nawab does not amount to any exercise of jurisdiction by the court over him Issuing a process to a witness either to attend directly in a court or before the commission appointed by the court subjects the witness to certain penalties in case of disobedience, it cannot therefore, be said that there is no exercise of jurisdiction Dicey in his Conflict of Laws, Students Edition page 250 expresses the opinion that a foreign ambassador is immune from the process of the court to attend for being examined as a witness A fortiori, the court could have no jurisdiction to issue a commission Much reliance is placed on Queen Empress Vs A M Jacob (19 Calcutta 113) where the Ruler of the Hyderabad State was examined on commission in a case initiated on his complaint That case is not an authority since the commission was issued with the express consent of the Ruler '

The Rulers of Indian States also enjoy complete exemption from the operation of the Indian Motor Vehicles Rules, vide the Motor Vehicles Native State Rules 1916, Government of India Notification No 627 dated the 6th July 1916

EXTRA-TERRITORIAL CRIMINAL JURISDICTION.

IT is a general principle of law that all crime is local, as provided in Section 177 Cr. P. C. In other words the jurisdiction to try a person for an offence depends upon the crime having been committed within the area of such jurisdiction and not upon either the place where the offender is found or upon his nationality. This principle is found enacted in Section 2 of the Penal Code which declares that every person (which will include foreigners as well as subjects of Indian States) shall be liable to punishment under the Code for every act or omission contrary to the provisions thereof, which he shall be guilty within the said territories. It is also laid down in Pitt Cobbett's cases on International Law Vol. 1, 5th Edition that, "The doctrine that criminal laws of jurisdiction are territorial applies not only in England but also in other parts of the British Dominions." In R. V. Ganz, Pollock laid down, "It is and must be perfectly clear that each person who is within the jurisdiction of the particular country in which he commits a crime is subject to that jurisdiction." There are however, some

statutory exceptions to this general rule Section 3 of the Indian Penal Code provides that any person may be liable for any offence committed by him beyond British India, if there is a law passed by the Governor General in Council to that effect. Section 4 of the Indian Penal Code provides that the Code will apply to offences committen by:

(1) Native Indian subjects beyond British India.

(2) British subjects within the territories of any Native Prince or Chief in India.

(3) Any servant of the Crown whether a British subject or not, within the territories of any native Prince or Chief in India

As a counter part of Section 4 I P. C. which deals with the substantive law, section 188 Cr. P. C. provides the procedure for the exercise of extra territorial Criminal jurisdiction by British Indian Courts in cases where offence is committed by British subjects within the territories of Indian States. Section 188 Cr. P. C. runs as follows:

"When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India, or when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

When a servant of the Queen (whether a British subject or not) commits an offence in the

territories of any Native Prince or Chief in India, he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Provided that notwithstanding anything in any of the preceding Sections of this Chapter no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one for the territory in which the offence is alleged to have been committed, certifies that, in his opinion the charge ought to be inquired into in British India; and, where there is no Political Agent, sanction of the local Government shall be required:

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India, shall be a bar to further proceedings against him under the India Extradition Act, 1903 in respect of the same offence in any territory beyond the limits of British India."

The power to make laws for Native Indian subjects of His Majesty, wherever they may be, and for all subjects of His Majesty and all servants of the Crown within other parts of India is conferred on the Indian Legislature by Section 85 of the Government of India Act 1919. Section 294, clause (7) of the Government of India Act, 1935 also

provides that ' Nothing in this Act shall be construed as limiting any right of His Majesty to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States

The provisions of the Indian Extradition Act should also be read in this connection Section 16 of the Indian Extradition Act 1903 provides that the provisions of Chapter 3 of the said Act shall apply to an offence in respect of which a court of British India has concurrent jurisdiction That is to say, the Extradition proceedings from British India may be resorted to even in cases in which British India has concurrent jurisdiction with foreign States Section 6 of the Extradition Act 1870 also lays down in Clause 6 that every fugitive criminal shall be liable to be apprehended and surrendered whether there is or is not any concurrent jurisdiction in any court of Her Majesty s Dominions over that crime This Section was inserted to defeat the decision in Trivnans case (1864 5 B and S 645) in which it was held that when there was jurisdiction to try an offence in both countries extradition could not be demanded

In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council 1902 and by Section 22 of the Indian Extradition Act 1903 the Governor General has made rules wherein

it is provided that if the accused person is a British subject, the Political Agent shall before issuing a warrant u/s 7 of the said Act consider whether he ought to certify the case as one suitable for trial in British India and he shall instead of issuing such a warrant, so certify the case, if he is satisfied that the interest of justice and the convenience of witnesses can be better served by the trial being held in British India. (No. 1862—I A dated 13th. May 1904 see Gazette of India 1904 No. 1 Page 364). The Governor General in Council has also directed that for offences committed in some of the Native States (including Jhind), the person accused should except under certain circumstances be handed over for trial to the courts of the States Gazette of India 16th August 1876 No 87). In a Bombay case, the Political Agent at the instance of the authorities of of a Native State issued a warrant for the arrest of an accused in British India u/s 7 of the Extradition Act 1903, and subsequently, at the instance of the accused, issued a certificats u/s 188 Cr. P. C It was contended that the issue of the certificate after the issue of the warrant was bad in law as it contravened rule 3 framed by the Governor General in Council u/s 22 of the Extradition Act which has already been referred to. That is to say, in such a case, the Political Agent should have, before issuing a warrant, considered whether he ought to certify

the case as one suitable for trial in British India and when a warrant U/S 7 Extradition Act has once been issued by the Political Agent after having considered the desirability or otherwise of the trial in British India, he could not issue a certificate u/s, 188 Cr P C at the instance of the accused But the Bombay High Court held in 13 Criminal Law Journal 537 that the direction or admonition in the aforesaid rule 3 did not control or purport to control section 188 Cr P C and, therefore the certificate issued by the Political Agent was good

In Jath State a similar case occurred which placed the High Court of Bombay and the Government of Bombay in an awkward position A person from Solahpur District was involved in a Criminal case The Political Agent and Collector of Bijapur granted the warrant of arrest but the accused surrendered himself to the Political Agent and pleaded that as he was a British subject, he should be tried in British India On this the Political Agent ordered his trial to be held in British India

The Durbar protested against this order which was against extradition rules on which he quashed it and directed the handing over of the accused to the Jath State On appeal by the accused the Sessions Judge of Bijapur referred the matter to the High Court The High Court decided that the

quashing of the order was wrong and ordered the accused to be tried in a British Court On the matter being brought to the attention of the Bombay Government by the Durbar, it admitted the mistake done in the matter but refused to over-ride the decision of the High Court. It, however, undertook to press the question of jurisdiction if a similar case arose in future.

Thus where a person commits an offence outside British India and is later on found in British India there are two courses open. He can be tried in British India U/S 188 Cr. P. C. if the case falls within its purview, or, he can be arrested and sent to the State where he committed the offence to take his trial there under the Extradition Act. Section 188 Cr. P C. of course applies only in cases where the accused is found at any place within British India. But the expression is not restricted to cases where a person can be said to be 'discovered' in British India. It includes cases where the accused is brought by the Police to a place in British India from a place outside it. In Emperor Versus Maganlal—6 Bombay 622—it was held that an Indian subject of Her Majesty arrested in an Indian State and brought into a British District under arrest must be held to have been found in that district, and could be tried there for the offence committed in the State. Moreover, the

Lord Willingdon admitted the justice of the Princes' demand and accepted that all disputes between the States and the Government of India or any Provincial Govt., in which claims as to water, land or money were at issue may be regarded as justiceable and accordingly proper for adjudication by arbitration—Section 130 of the Government of India Act of 1935 accordingly laid down that questions of interference with water supplies may more fittingly be referred to a commission of arbitration. A perusal of Section 131 however is sufficient to demonstrate how the remedy proposed still contains the same germ of discretionary power that eats through the legal maxim that no one can be a judge in his own cause. Section 131 provides that "if the Governor-General receives such a complaint (about interference with the right to get water supply for irrigation) he shall *unless he is of opinion* that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, *as he thinks fit*, to investigate in accordance with such instructions as he may give to them; and to report to him on such of those matters as he may refer to them.

"After considering any report made to him by the Commission, the Governor-General shall give such decision and make such order, if any, in the matter of the complaint, *as he may deem proper*".

Has the sting of the canker been removed? The reader can safely see that the party interested in a dispute has still retained the discretion to sit as a Judge in his own cause.

Similarly the safeguard provided by the Federal Court in the Government of India Act of 1935 is not as satisfactory

or effective as the claims of justice would demand. Section 204 defining the original Jurisdiction of the Federal Court, rules that " subject to the Provisions of this Act, the Federal Court shall to the exclusion of any other court, have an original jurisdiction in the disputes between any two or more of the following parties, that is to say, Federation, any of the Provinces, or any of the federated States, if in so far as the dispute involves any question(whether of law or fact) on which the existence or extent of a *legal right* depends.

Provided that the said Jurisdiction shall not extend to a dispute, to which a State is a party, unless the dispute—

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which, the Federal Legislature has power to make laws for the States."

The possibility of getting justice through the Federal Court does not thus extend to the whole range of disputes with the Government of India. As the Secretary of State had foreshadowed, the States by accession to federation would exchange a control of paramountcy for a free share in constitutional control over only that area which would come within the purview of the federation. Outside that area paramountcy would still remain paramount and that supremacy of suzerainty would at the same time be more and more exerciseable not so much by the Crown as by the Crown's Representative or by his Political Adviser, " ay there is the rule."

The extra-territorial jurisdiction claimed by the British Government in Indian States is another feature of Paramountcy that still rankles in the side of the Indian States. The Treaties of Alliance entered into with a large majority of States by the Marquis of Hastings in 1818, while securing the

subordinate co-operation of the Indian Allies fully recognised their internal Sovereignty. The British Government abjured all rights of interference in the internal affairs of the States and thus recognised their autonomy and internal sovereignty. In the earlier stages of Indian History relations with Indian States were more or less governed by analogies drawn from International Law, which continued in some State even after the assumption of Imperial Control after 1859. Thus in the Travancore State the judiciary of the State had full and unquestioned jurisdiction to try Europeans and all British subjects for offences committed within the State territories. This privilege continued for some time even after the passing of the Foreign Jurisdiction Act 1890. Other High Courts in important Indian States also claimed the right to try British subjects as well as European and American foreigners on the analogy of Travancore ; but such an extension of jurisdiction was sternly disallowed and it was also withdrawn from the Travancore State. Now under the Foreign Jurisdiction Act of 1890 the British Government claim the right to decide trials even for offences committed within the territories of Indian States where the offenders may happen to be British subjects or other foreigners.

This extra-territorial jurisdiction which is legalised by section 188 of the British Criminal Procedure Code is mostly resorted to when an Englishman, a European or an American happens to be the accused party and has to be tried for an offence committed in a State territory. The ground put forward as a justification for this claim is the responsibility imposed on the Paramount power by its International obligations. The British Government have, however, agreed to invite even representatives from Indian States to take their seat in the League of Nations. International obligations

imposed by the League, as against slavery and opium consumption have already been accepted by the Indian States as members of the League. There is now little justification to withhold the power to try Europeans or Americans from Indian States for offences committed within their territory, especially in the case of States that maintain a chartered High Court and an efficient and independent judiciary.

The claim to try foreigners, moreover, is not confined only to Europeans and Americans. The exclusion extends to all foreigners and though it has not yet been claimed in case of a Japanese or a Tarter accused the formula covers foreigners of all nationalities and makes no exception of Asiatic foreigners. It is very likely to cover Australians and South Africans if a case arises in an Indian State and a claim is made to deny the jurisdiction of an Indian State Court.

The right to withhold even British subjects including British Indian subjects from the authority of the States judiciary has no international sanction behind and seems to be only a definite assertion of a Paramountcy claim. In course of time and with the progress of practice and convention that claim is now rarely assumed or sought to be enforced where the offender is only a native Indian subject of the Crown. But even in their case the Paramount power has often assumed the right to try British Indian subjects who are servants under the British Government for offences committed in Indian States limits. With the rapid extension of Railways and Post and Telegraph Offices, numerous servants of the British Indian Government happen to be serving in these various Departments within State territories and there can be little justification for the Indian Government asserting their right to hold their trial, especially when the offence is not concerned with their official work or departmental duties.

The claim is not pressed in some of the more important Indian States, which enjoy the reputation of maintaining an efficient and independent judiciary, but in theory the claim even now remains paramount. The Government of India Act of 1935 by Section 294 (7) upheld or revived this claim in all its naked impropriety. That section enacts that "Nothing in this Act shall be construed as limiting any right of His Majesty's Government to determine by what Courts British subjects and subjects of foreign Countries shall be tried in respect of offences committed in Indian States". Paramountcy knows no law, no limit.

The same importunate demand has of late been pressed on the States in the matter of jurisdiction over members of the Crown Police stationed at Neemuch. With the bestowal of Provincial autonomy authority over the Police stations in the Provinces seems to have gone out of the hands of the Government at the centre; and yet when occasions arise for the Crown Representative to protect the Indian states from internal commotion he may need the arm of the Police to enforce peace and maintain order and he now maintains his Crown Police at Neemuch. It is claimed that if any member of the Crown Police commits an offence within the territories of an Indian State where it may happen to be employed on duty, he would be triable only in a court of British India and not of the Indian State where the offence may have been committed. After a good deal of parley and negotiations it is now conceded that where the State has been ordinarily exercising criminal jurisdiction over Indian subjects serving under the Government of India the trial of the Crown Police offender may be held in the Court of that State, when the offence was not concerned with the Police duties and not committed by the offender while acting in the course of his

official work. In the case of all States, however, it is stipulated that the Political Officer attached to the State has in the first place to be informed of the commission of the offence and the pending trial before the trial can commence; and the local Political Officer is to be vested with the power and discretion to recall and transfer the case to his own court or to any other court in British India at any stage of the trial. If such a discretion is never claimed or conceded in the case of the ordinary Provincial Police there is little justification to make such a discrimination in favour of the Crown Police. The matter is one for further negotiation so as to temper the rigidity of paramountcy.

Jurisdiction over lands transferred to the Railway authorities can without serious inconvenience be retroceded to the States which own the land. This claim has been long under consideration; and with good will on both sides such jurisdiction can easily be restored to the States. The lands were given only for Railway purposes; for construction and maintenance of Railway operations; and yet in course of time jurisdiction of every kind, civil, criminal and fiscal had perforce to be surrendered in the exercise of the paramountcy claim. As time passed on, fiscal and even civil jurisdiction was gradually retroceded, and even criminal jurisdiction has been restored over local, isolated lines forming no link in any trunk system of Railway communication. With the recognition of the right of any State Police to follow in pursuit an absconding offender and arrest him on any land covered by the Railway in any foreign jurisdiction the main difficulty regarding the pursuit of criminals under interspersed and differing jursdictions is bound to disappear. The Indian States have also generously renounced their rights of jurisdiction over lands traversed by any Railway line of strategic importance in the event of War:

and no difficulty is likely to be experienced on such occasions of emergency when the Rulers of Indian States are never loth to place their resources at the disposal of the Crown for common defence. The justice of the States claim was recognized at the Round Table Conference in 1930—1933 and the retrocession of jurisdiction over Railway lands was embodied in the terms of accession to the federation agreed upon in 1939. The proposed federation, however, proved infructuous and the anomaly of extra-territorial jurisdiction over Indian States still persists. The inequality deserves to be remedied and removed under any future negotiations for an Indian union or federation.

In any scheme of federal Union, however, the Indian Rulers must maintain their personal touch with the British Crown to which they have sworn loyalty. When it is sometimes urged that the political conditions in our Country are not suited for any purely democratic rule the spoke in the wheel is traced to the claims of minorities not more than to the incoherency of any proposed union with the Indian States. These latter must ever remain monarchic in character; and though with the gradual progress of constitutional reforms in the States this incoherency is likely to be dissolved the substitution of any complete constitutional absorption of the States into the union in place of the protection claimed from the Paramount Power is not at all possible. There is growing demand for responsible government, it is true, on the part of the subjects of the States as they grow more and more politically self-conscious; the Ruler of an Indian State may in course of time choose to accept the position of a limited monarch; however total popular responsibility is not possible in an Indian monarchy. The Ruler has to be protected, in person and his position by the Crown. By their treaties of alliance the Rulers are guaranteed

protection against external aggression; and the Imperial Government in so vouchsafing their protection have, in the words of Lord Minto, (1909) assumed a certain degree of responsibility for the general soundness of their administration, and that Government would not consent to incur the reproach of being an indirect instrument of any gross misrule in the States. For any such alleged mis-government or suspected crime the Princes have been promised the privilege of an independent inquiry by their peers, open or secret, instead of being ever hauled up before any criminal court for any alleged offence. In order to maintain their honour and dignity the law has guaranteed their immunity from any trial by a Court of Law. They are not liable to arrest or to the process or jurisdiction of any Court civil or criminal. For the vindication of this their personal status or dignity the Princes will always have to depend on the paramountcy of the Crown, however, extensive the sacrifices they are induced to agree to with regard to other elements of their personal rule.

In the Federal Scheme enacted by the British Parliament in 1935 this duty of upholding the dignity of the Indian Rulers was charged as a special responsibility of the Viceroy or the Crown Representative. By Section 12 of the Government of India Act the Crown Representative has been specially entrusted with "the protection of the rights of any Indian State, and the rights and dignity of the Ruler thereof." For this mutual obligation the Indian Ruler must cherish and maintain his personal contact with the British Monarch. At the same time it will have to be brought home to the Government of India at the centre that the protection so promised to the Indian Ruler is not merely against external aggression; it will be claimable even against internal disorder and disaffection, which popular agitation in neighbouring British

Indian Provinces very often contribute to fan and inflame. The Princes are as much entitled to the protection on the part of journalists in British India. The gutter press in British India often indulges in malignant campaigns of slandering and defamation from motives of blackmail and extortion. The evil had once become so rampant and mischievous that during the Viceroyalty of Lord Reading the Government were driven to enact the law against attempts at spreading disaffection against Indian Rulers with stringent penalties attached to any contravention. The law of 1924 did not prove a very potent weapon in checking this abuse until again in 1934 Lord Willingdon had to reinforce his armoury by bringing the Princes Protection Bill on the Legislative anvil. Under any future form of federal union when the Indian States would have exchanged a large share of their dependence on paramountcy for protection for their own participation in administrative control at the helm it will be vitally imperative to reinforce this protective measure to arrest all attempts for buying blackmail by making indecent and ribald attacks on Rulers and female members of their families in the name of freedom on the part of the unscrupulous press in British India. The evil could only be effectively checked and stamped out if the offence to create such disaffection in Indian States against their Rulers is made extraditable. There ought to be little hitch in rendering such help on terms of reciprocity by means of extradition agreements when the internal affairs of Indian States come more and more under the purview of the Federal Legislature.

The improvement of internal administration in the autonomous States and the removal of all inequalities so as effectively to dispel any feeling of inferiority complex now affecting the Indian States should be the target aimed at by

every Indian State Reformer. A close study af this useful monograph is calculated to help such diligent study and careful research as are necessary for self-improvement and self-discipline.

MANUBHAI N. MEHTA,
Kt., C. S. I.

AN APPRECIATION

This book has been dedicated to Lt. Colonel His Highness Rais-ud-Daula Sipah-dar-ul-Mulk Saramad Rajhai Hind Maharajadhiraj Sri Sawai Maharaj Rana Sir Udai Bhan Singhji Lokendra Bahadur, Diler Jang, Jai Deo G. C. I. E., K. C. S. I., K. C. V. O. of Dholpur under whose inspiring patronage it has been completed. His Highness is descended from the ancient and illustrious Ruling House of India, whose Princes first came into prominence prior to the year 300 B. C. when they ruled the town of Rudrakot in Taxilla Valley, and thence-forward, carved for themselves kingdom after kingdom at the swords-point. Born in 1893 he succeeded to the Gaddi in 1911 after a distinguished educational career in Mayo College, Ajmer. Keenly intelligent with a subtle brain and the gift of speech in several languages, he leads an examplary simple and unostentatious life. In the words of Edwin Montague, ex-Secretary of State for India, "The Maharaj Rana is a gentlemen, if ever there was one, a most delightful person, extraordinarily amiable and most attractive." In His Highness' personality, where simplicity and sagacity, far-sighted states-manship and traditional stability of thought and action are so happily and exquisitively combined, we find a complete answer to the susceptibilities of those, who doubt the efficacy and efficiency of benevolent monarchical rule in India and are against the preservation of India's historical and racial genius for personal rule. Unfortunately, outside Indian India, even amongst educated readers, fantastic stories about Indian States are more easily swallowed than unromantic realities. The mere phrase, "Eastern potentate" suggests a

background of Arabian Nights, dancing girls, jewels and wealth. But they are so varied in type, outlook and personality that the vice of generalization is liable to give very false impressions of the Aristocratic Rule in India, which is founded on the basic principles of Indian Culture and philosophy and which is, what the mass of eastern people best appreciate and understand. A visitor obsessed with such romantic tales, heard in distant lands, will be sorely diappointed, if, while seeking audience with His Highness of Dholpur, expects to see a regal personality bedecked with jewels and over occupied with superfluous things of mere recreative value. Instead, he is bound to be impressed by the simple yet kingly Prince, whose face so abundantly radiates his inner-self—his nobility, his sanctity of thoughts, his sincerity of purpose. While with him, one atonce feels that he is in the presence of a kind and sympathetic ruler, who will do no harm, yet his keen, imaginative and intellectual outlook born of psychological intuition, appears to be penetrating deeper than one's outer-self, which makes those, who dare make false pretensions, shudder within themselves, although His Highness, in his magnanimity, will never speak a harsh word. After a brief conversation, one is beholden to him for his loftiness of thoughts and for the very intelligent and interesting discourses on complicated subjects, which are discussed by him in a peculiarly graceful manner and with a facility, which shows his complete mastery over the subjects, he is talking about. His deep insight of various subjects have many a times left the casual visitors wondering about the abundance of his knowledge in different spheres of life. One evening, we began talking about Motor Engineering, while sitting at the dining table. After His Highness retired, the admiring visitors asked me "What degrees in Engineering

His Highness has got?" When I replied that it is all his self-acquired knowledge through private study and experience, they began scratching the back of their ears and took a little time in believing me.

His Highness is by nature so good and kind that he will not willingly hurt a fly, and, as such, has an infinite capacity for condoning the faults of others. As a ruler he is the beloved idol of all classes of his people, and has a charming knack for evoking loyalty and devotion from those around him. One can break through iron chains, but he wraps a man by silken chords of love and sympathy, which makes his people surrender themselves as willing and loyal devotees. Above all, his kindness has even evoked response from the animals, who flock to him in the jungle with that psychic faculty, which they seem to possess for emotional response. I cannot do better than reproduce here a few sentences from a British Officer, who was a privileged witness to the almost unbelievably interesting sight of the feeding of wild animals by His Highness in the jungle-the only brief pastime which His Highness is able to snatch out of a usually very busy day. "There has grown up between this Prince and his wild animals a friendship such as probably exists in no other place in the World. Each evening, when he goes out in his car, mighty antlered Sambhar stags, gentle hinds and fawns come from the forests to put their heads through the windows for fruit and bread and other tit-bits. As he moves off, a herd of forty or more follow his car, completely fearless, yet none has ever known confinement. Other wild friends he has, too, this generous Prince—peacocks, partridges and one tawny-breasted Tee-pie, which flies down from some branch to feed upon his hand." The Maharaj Rana knows the haunt and habits of every animal. He calls most of them by name,

and it is astounding how they respond to his call, one by one, when they are summoned. His Highness looks upon them all as his family and derives immense innocent pleasure for his highly religious and philosophical mind by looking after these dumb yet devoted birds and beasts. It is undoubtedly an unprecedented triumph of which one can be justly proud.

With such a philosophical outlook of life, His Highness is certainly not one of those, who cling to their earthly possessions and power as an acquisition, which must be covetously preserved for its own sake, rather, he is intensely and religiously conscious of its concomitant duties towards his subjects whom God has entrusted to him and looks upon all his wealth with that saintly resignation, which is born of his instinctive indifference towards all earthly achievements, which have only transitory values. His Highness believes that the strength and safety of a Ruler and his State can only be maintained by the loyal affection, contentment and co-operation of his own people and therefore he personally looks after the prosperity and well-being of his subjects. In Dholpur, personal touch of the Ruler enlivens and enriches the lives of the people who have peculiar feelings of oneness with their Ruler They feel that they belong to thier Ruler and that their Ruler belongs to them. Such sentiments do appear foreign to people outside Indian India, but these feelings are there, and are an invaluable asset in the hands of benevolent Rulers, the magnitude of which cannot be easily measured. Living under such an atmosphere, His Highness has been able to do the greatest good to the greatest number and therefore justly feels that no attempt should be made to produce an "Europeanized India" through the dead hand of an impossible uniformity, and that any form of Government by 'counting heads' could never hope to prosper

in this ancient country ; where personal leadership, specially if it had a religious flavour, could carry the masses far back into middle ages beyond reach of modernity.

In the words of Rosita Forbes, a gifted English writer "The Maharaj Rana of Dholpur has identified himself, not only with the welfare of his people, but with their personal feelings. He is, in himself, the whole of his State, for I doubt if there is a single person in Dholpur who could envisage life without the continuous interest and protection of their Ruler. The poorest among them can count on direct personal access to his Prince and it is this privilege which ensures the popularity of the monarchical principle in well-governed Indian States as opposed to a bureaucracy, however well-meaning. This is where the States had the advantage. Obviously the quality of rule depends first and foremost on the character of the Prince. A man like the Maharaj Rana of Dholpur ensures the prosperity of a principality. It needs nothing more."

In these days, when the future of this great country is passing through very crucial stages and when fateful decisions are bound to be taken during the post-war constitutional reconstruction in the country, which will have lasting and salutary affects on the future of the Princely Order, as well as, on the integrity and autonomy of their States, it is a matter of great relief and satisfaction that sagacious, far-sighted and experienced Rulers, like tha Maharaj Rana of Dholpur, will be able to guide the great Princely Order, in whose future lies the answer of India, in whose history lies the true story of India's social and political life, and in whom, lives the destiny of this great country.

RANBIR SINGH

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LEGAL PROBLEMS
IN
INDIAN STATES.

JUDICIARY IN INDIAN STATES

HONEST Administration of justice unaffected by prohibitive financial burdens, is one of the main functions, which every Government should perform and if there is anything that proves a formidable force to counteract the challenge of a nation's executive chaos, legislative license or democratic riotousness, atonce cementing its unity and defying disintegration, it is its trusted, independent and effective judicial machinery. Thus a judiciary, secure from caprice of legislature or executive, independent of parties and politicians, colourless and creedless and unaffected by the vicissitudes of politics, is a a fundamental requisite of all stable and good Governments

The Judicial system of Indian States has lately been the subject of much adverse criticism, and, assuming that it may not be possible for small States to dispense justice for justice's sake, and to finance an efficient and independent High Court, it has been

suggested that Joint High Courts for a number of neighbouring small States should be established In some parts of the country, schemes of Joint High *Courts for a number of small* States have already matured and it is expected that such tribunals will begin functioning very soon It is, therefore, high time for us to critically examine our administration of justice for the protection of the much coveted and prized Sovereignty, and if it is found that a thorough over-hauling or, in some cases, a slight touching up is overdue, we should immediately set ourselves to the task and bring our judicial system on uptodate and just lines

It has been rightly said that "Laws are a dead letter without courts manned by truly honest Judges to expound and define their true meaning and interpretation" and "That Law is the best, which is administered best." Thus, the measure of the good done to the public by the laws of the State depends upon the good sense of the judicial officers, who are entrusted with the sacred task of arbitrating between man and man Great care should, therefore, be taken in the selection of the Judicial officers He must not only be an experienced and qualified law graduate, but he must also be in every respect a good and scrupulously honest officer. He must be punctual and regular in his habits, and lenient to an extent that the duties of his office permit, considerate

when he can afford to be so without injuring the cause of justice, and above all patient and hard-working. It cannot be impressed too strongly on judicial officers that they should remain at arms' length with persons engaged or interested in cases pending before them and should so conduct themselves as not to allow an impression to be created that they are on terms of undue familiarity with one of them. It, at times, does seem difficult to some extent, and compels certain restrictions on the social life of the judicial officer, but it is a fundamental principle of the due administration of justice that the judicial officers should not only be fair and impartial but also should appear to all reasonable persons to be fair and impartial and no litigant should have any reasonable ground to think that the judge trying a case is biassed His primary duty is to provide a peaceful and rational solution of differences, which in the absence of an impartial and independent arbiter, might inflame passions and even result in violence. A second and not less important duty is that the interpretation of the law should be inspired by an enlightened and just liberality. The courts should endeavour not to look at the legal technicalities only with the cold eye of an anatomist or in any spirit of formal or barren legalism, but as a living and breathing organism which contains within itself, as all

life must, the seeds of future growth and development and of the destruction of the fungii. Another point which should be considered in this connection is the accessibility of the presiding officer. All of us know that, at times, the presiding officer cannot be approached without passing through the channels of Jamadars and Serishtedars, who are more often than not, unnecessarily obstructive and even unjustly co rupt and expensive. It is, therefore, absolutely necessary that the approach to the presiding officer should not be allowed to become difficult in any way, and any attempt to stop the people from directly approaching the court should be seriously dealt with. Every presiding officer should also make it a point to set apart a portion of his working-hours to receive petitions directly. Immediately after this practice is introduced, there may be a rush of litigants desirous of approaching the presiding officer, but after a time the rush will naturally reduce itself to a normal and manageable size.

I hope the oft-quoted legal maxim "Justice delayed is justice denied" will bear repetition here, as it is impossible to deny that the delay of justice still persists and has become universally proverbial. The need for a speedy disposal of cases cannot, therefore, be over-emphasised. In practice it has been experienced that the speedy disposal of work can only be attained by the cooperation of the members

of the Bar as well as the litigants themselves, who, either to prolong the proceedings or to meet some of their trifling difficulties seek adjournments, and it is this practice that is mainly, among others, responsible for the delay of justice. The members of the Bar and the litigants should, therefore, be persuaded to desist from the practice of seeking unnecessary adjournments, and the courts should also, in their discretion, refuse to grant adjournments on flimsy grounds. In the case of small States certain cases must also be delayed on account of the fact that the witnesses have to be summoned from neighbouring States. In such cases, it is necessary that the neighbouring States should agree to extend their cooperation by sending their subjects for evidence to other States without unnecessary formalities and consequential delay.

Litigation at present entails its cost under various heads and the total cost which a litigant has to incur is considerably high. It is even said, with an amount of forceful truth, that the cost of litigation is at present prohibitive to the poor (which comprises very large numbers in India) and from the mere consideration of cost, many of the people, who otherwise would feel inclined to seek, and be justified in seeking the redress of their wrongs, quietly put up with them because they cannot afford to pay the price set on justice in the shape of costs.

Every State should, therefore, make it a principle to reduce the cost of litigation to the lowest possible level and thus bring justice within the reach of an average man. There are some States in which the administration of justice is run as a paying department. As I have said above, the administration of justice is one of the most sacred duties of the State which should not be weighed in unjust golden scales, and even if the States are required to incur expenditure on this Department, no Finance Member should, for the good name of the State, grudge it Then there is another point, which makes us hang down our faces in shame, and that is the corruption that exists in the present judiciary. It is often said that corruption is due to the fact that the Judicial officers as well as their staff in Indian States, particularly in small States, are not well paid. This may be true to a certain extent But we find that even the judiciary and its entire staff in British India, which is very well paid, is not free from this curse. I am sure it is not too much to expect from young educated Indians of good breeding, to refuse to sell their conscience for any price. Virtue has always its own reward, and the immense self-respect, pleasure and pride, which a soul with an unsullied conscience enjoys, may well be the envy of those who agree to prostitute their conscience for mercenary considerations. To the Hindu there is something

more and that is that he blindly believes in the great theory of *Karma* and *Sanskar* and, therefore, in the transmigration of soul Therefore, few, if any, very short-sighted people would like to accumulate debts of *Karma*, which must be paid in next life Therefore, if we cannot secure an efficient judiciary by means of the plentitude of wealth (which is not a guarantee for truthful justice), we should try to secure it by our high sense of duty coupled with indefatigable industry and constant vigilance. All complaints in this respect should be patiently heard, carefully examined and severely punished. To root out this evil, the cooperation of the members of the Bar and the general litigant public is also absolutely necessary. So long as they indulge in giving illegal gratifications at the slightest provocation, nay, so long as they insist on the subordinate members of the judicial staff to take illegal gratifications, it is extremely difficult for the administration to purge out this curse. If they want things to be done speedily, their proper course is to approach the presiding officer and not to indulge in giving illegal gratifications.

It has been a practice in the States to issue orders, circulars, and notifications from time to time to serve the necessities of the situation as they arise owing to age-long customs and historic past. This course has now been followed for a long time, and

situation has arisen in which we find that these orders, circulars and notifications have grown into a volume of scattered, sometimes incoherent and contradictory legislation. The whole thing at times forms a jumble as to make it extremely difficult to lay one's hand on a particular thing whenever it is necessary. It is indeed a difficult job for those to whom the task of administering justice is entrusted, when they have to depend on such a mess of scattered and jumbled legislation In order to remove this unsatisfactory state of things, it is necessary that all such scattered set of rules and orders etc. should atonce be replaced by a consolidated, systematic and handy set of laws which are found to be necessary to meet local requirements.

In order that the condition of the poor public may be further ameliorated, it will also be in keeping with the modern legislative requirements, if steps are taken to enact laws which are primarily meant for the betterment of the lot of the rural population. The abolition of Civil imprisonment, the legislations for the relief of agriculturists, the limitation of the rates of interest chargeable by the local money-lenders, are some of the instances in which some legislation may be usefully undertaken for the welfare of the poor public.

It will not be out of place to mention here that the cooperation of other departments of the State

is also very necessary for the smooth working of the Judicial Department. Particularly in small Indian States, it is very essential that the various Departments should cooperate with the Judicial Department and help it to maintain its authority and dignity as an independent tribunal. If the varicus departments of the State realise that all their efforts should be directed towards one common goal—unadulterated justice—there will be no room for jealousy or competition and all difficulties in this respect will vanish.

The judiciary cannot hope to succeed in these great ideals mentioned above without the assistance of the strong, free, independent and upright Bar. The Bar no less than the bench are ministers of justice, and they should do all they can to facilitate the achievement of the high mission and sacred duties of the judicial Department.

In this harassed and fear-racked world, when brute force is held to be *ultima-ratio*, a great responsibility lies upon the just judiciary to uphold the surpremacy of the law, which means the equality of all men before the Law, the mutual recognition of rights and duties, the acceptance of the fact that there are two sides to nearly every question, readiness to give an opponent or critic a hearing—all indeed, that is summed up in that noble word "Toleration."

Let us hope that all Indian States will possess the precious judicial tribunals which will stand firm and

aloof amid the ebb and flow of political theories, and the victory and defeat of parties. They will be sympathetic to all, but allied to none, and will play a great part in the building up of a nation by proclaiming and cherishing those things which lie at the root of all civilization, and eternal principles and verities which have their origin in the bosom of God.

CIVIL SUITS AGAINST PRINCES AND CHIEFS

SECTIONS 86 and 87 of the Civil Procedure Code create personal privilege for sovereign Princes and Ruling Chiefs. It is a modified form of the absolute privilege enjoyed by independent sovereigns and ambassadors in the courts in accordance with the principles of International law. The difference is, that while under International Law the privilege is unconditional, dependent only on the will of the Sovereign or his representative, in India it is dependent upon the consent of the Governor General in Council which can be given only under specified conditions. This modified or conditional privilege is, however, based upon essentially the same principles as the absolute privilege, the dignity and independence of the Ruler which would be endangered by allowing any person to sue him at pleasure, and the political inconveniences and complications which would be the result. ((1897), 21 Bombay 351 and (1921) 62 I. C. 778). The rules of English Law on the subject are to be found stated in Dicey's Conflict of Laws. It lays down that the courts in England have no jurisdiction to entertain any action or other

proceedings against any foreign sovereign. The foundation for the rule is also described in (1880) 5 P.D. 197 in the following words, "from all these authorities it seems to us, although other reasons have sometimes been suggested, that the real principle on which the exemption of every sovereign from the jurisdiction of every court has been deduced is that the exercise of such jurisdiction would be incompatible with his regal dignity, that is to say, with his absolute independence of every superior authority."

As I have said above, this principle has been accepted in the case of Indian Princes, although in a modified form, in as much as the consent of the Governor General has to be obtained before any suit could be filed against a Prince or a Chief. After such consent, as required by section 86 has been obtained, the Code further provides in section 87 that the name of the Prince or Chief should not be dragged in the title of the suit and that he should be sued in the name of his State. In a suit against a foreign State when the plaintiff has failed to obtain the consent of the Governor General in Council, the courts have no authority to proceed with the suit. It is not open to the courts to even question the propriety or impropriety of the order of the Governor General, refusing to consent U/S. 86 of the Code (A I.R. 1935 Oudh 164).

Under sub-section 3 of section 86, it has been provided that after a decree is passed against a Sovereign Prince or a Ruling Chief in a validly laid suit, no such sovereign Prince or Ruling Chief shall be arrested under the C. P. Code and that, except with the consent of the Governor General in Council, no decree shall be executed against the property of any such sovereign Prince or Ruling Chief. The consent required for executing the decree against the property is evidently independent of the consent required for intiating the suit.

As to persons who have been held to be sovereign Prince or Ruling Chiefs, see the following cases; (1884) 8 Bombay 415; (1876 25 Suth W. R. 404; 1914 Allahabad 493; 1909 P. R. 21; 1888 Punjab Report No. 191; 1919 Bombay 122; (1883) 9 Calcutta 535.

Under clause (5) of Section 86, no consent of the Governor General is necessary when the suit has been filed by a tenant of immovable property against a Prince or a Chief from whom he holds or claims to hold properties. Section 86 C. P C. also does not apply to proceedings U/S. 184 Indian Companies' Act

In a suit against His Highness the Maharaja of Benares for profits in respect of certain villages in the Allahabad District of which His Highness was admittedly a co-sharer, it was contended that His

Highness was subject to all the responsibilities and liabilities of a land-holder under the ordinary law with respect to all lands situated outside the State of Benares It was, however, held by their Lordships of the Allahabad High Court that His Highness being undoubtedly a Ruling Chief, he was entitled to claim the benefit of section 86 C. P. C. (A. I. R. 1924 Allahabad 422).

In cases where the defendant becomes a Ruling Prince after the institution of suits the provision of section 86 will apply to the further prosecution of the suit, as has been held in Maharaja of Rewa Versus Shivasaranlal A. I. R. 1921 Patna 23. But there is no inherent want of jurisdiction in the court to try the subject matter of the suit against him if the party suing ignores the bar and persists in the suit and the party sued acquiesces in the procedure and proceeds to judgment. In that case the judgment cannot afterwards be questioned on the ground that the bar was not removed before the suit was proceeded with. In Mighell Vs. Sultan of Johore (1894) 1. Q B 149, it was held that an independent sovereign may when sued, waive his privilege and elect to submit to the jurisdiction by appearance to a writ. In Chandulal Vs. Abadumer Sultan 1897) 21 Bombay 351 it was also remarked that "it would be inequitable to the last degree to allow him now to recede from that position and to avoid a trial on the issue raised

by himself whether it is he or the plaintiff that has broken the contract between them." In Maharaj Bahadur of Rewa Vs. Shivsaranlal (A. I. R. 1921 Patna 23), it has been held that "If a defendant wishes to take any advantage of any irregularity in the issue of the writ of summons or in the procedure by which the suit is commenced or carried against him, he should not enter an appearance but should serve a notice to the plaintiff to set aside the irregularity though appearance under protest or with notice of objection does preclude the defendant from objecting to the jurisdiction. In the case before us with full knowledge of the fact that entitled him to make an application U/S 86 under the code, the petitioner made application after application for an adjournment to file a written statement. Applications for adjournments are applications in the suit and there was accordingly an appearance by the defendant in the suit and the submission to the jurisdiction to the court, which in my opinion, disentitles him from now objecting to the jurisdiction of the court."

On the other hand, the Madras High Court has held in A. I R. 1916 Madras 835 Narayana Vs. Cochin Sircar that, "The privilege of not being liable to be sued without the consent of the Governor General in Council is not waived, if, after pleading it, the defendant pleads also on the merits of the case .....merely to object to the jurisdiction of

a court is enough to show that the defendant did not voluntarily submit to its jurisdiction. In this judgment their Lordships have followed an earlier decision of the same High Court, Parry & Co. Vs. Appasami (2 Madras 407).

In Baroda State Railway Vs. Habibulla Beg (A. I. R. 1934 Allahabad 740) the Allahabad High Court has also held that His Highness the Gaekwar had waived his privilege by allowing the defendant railway to defend the suit on its merits and to produce evidence and take the chance of getting a judgment in his favour But their Lordships of the Privy Council in appeal against the aforesaid judgment of the Allahabad High Court (A. I. R 1938 P. C. 165), held that, "The provisions relating to this matter are statutory. They are contained in sections 86 and 87 C. P. C. They are imperative, and having regard to the public purposes which they serve, they cannot in, their lordships' opinion, be waived in the manner suggested by the Allahabad High Court." In holding this view their Lordships of the Privy Council were impressed by the fact that the Gaekwar of Baroda filed a written statement containing the plea, that the suit was not filed against the proper party and was not maintainable.

In view of the aforesaid authorities it transpires that, although as a matter of general principle of law, the parties can waive irregularities in proce-

dure or any privilege conferred on them, the appearance of a party in court after having protested against the jurisdiction of the court, should not amount to a waiver of the privilege. In cases where the party contests the suit on merits without any protest at all it can of course amount to such waiver.

The judgment of their Lordships of the Privy Council (A.I R. 1938 P. C. 165) is now the latest authority on this point.

The fact that the sovereign Prince or Ruling Chief waives his privilege in one suit does not preclude him from pleading it in another suit [(1883) 9 Calcutta 535].

If a Ruling Prince carries on business under a particular name and style, he can be sued in such name by virtue of Order 30 Rule 10 C P.C. It was held in A I.R. 1934 Allahabad 740, that if an owner of a railway allows the railway to deal with third person as a legal entity and to enter into a contract on that footing, he cannot, when a suit is brought on such contract, assert his position as the proper party, nor can the railway administration repudiate its liability to be sued.

On appeal against the aforesaid judgment of the Allahabad High Court, their Lordships of the Privy Council held in Baroda State Railway Vs. Hafiz Habibullah (A.I.R 1938 P.C. 165) that "A

suit cannot be brought against an 'assumed name'. There must be some juristic entity capable of being sued which is using or is known by the assumed name The Baroda State Railway is owned and managed by His Highness the Maharaja of Baroda through his men and is not a corporation. Hence a suit as framed against the Gaekwar Baroda State Railway through the Manager and Engineer-in-Chief is not maintainable. Such suit is in reality, though not in form, against His Highness the Maharaja Gaekwar of Baroda and must therefore comply with the provisions of sections 86 and 87 C.P.C" Their Lordships further remarked that section 86 relates to an important matter of public policy in India and the express provision contained therein are imperative and must be observed as His Highness the Gaekwar is a sovereign Prince.

But with due respect to their Lordships of the Privy Council, the reasons given by the learned Judges of the Allahabad High Court in this case (Baroda State Railway Vs Hafiz Habibullah A. I. R. 1934 Allahabad 740) for applying Order 30 Rule 10 C P. C. appear to be more convincing. Justice Niamatulla, holding that Sections 86 and 87 C P. C. must be read with other parts of the C P. C such as Order 30 Rule 10. writes "Since the Maharaja of Baroda carries on business, i. e. runs a railway in the name and style of 'The Gaekwar Baroda State

Railway,' he can be sued in such name. The objection underlying sections 86 and 87 C. P. C is in no way frustrated. The contract having been entered into by the Railway Administration represented by its Manager, the other party to the contract is entitled to treat it as a legal entity for obtaining relief against breach of such contract. He need not go behind it to find out as to who is behind the Railway administration. If the owner of the Railway allows the Railway to deal with third persons as a legal entity and to enter into a contract on that footing, he cannot, when a suit is brought on such contract, assert his position as the proper party, nor can the Railway administration repudiate its liability to be sued. If a railway administration could enter into a contract through its manager, I can see no justification for holding that it cannot be sued through the same agency. So far as the Ruler of the State is concerned, no property other than that administered by the Railway will be liable to satisfy the decree, which may be passed against the Railway administration ... .in my opinion Order 30 C.P.C. which is headed as "Suits by or against firms and persons carrying on business in names other than their own," will have to be resorted to for holding that such a suit is maintainable. As I have said, Rule 10 of that order clearly covers a case like the one before us"

Justice Rachpal Singh has also remarked in this case, "there is another aspect of the case which is to be kept in view and it is that times have changed and sovereigns and Ruling Princes in these modern days are carrying on business and it would be wrong to apply rules of international law based on international comity to their cases."

This question also came up for consideration before the Lahore High Court in a case Rana Narayana Buddh Singh Vs. Gwalior Light Railway (A I. R. 1932 Lahore 136). It was held in that case that a suit against a business concern managed by a Darbar or a State is not a suit against the Prince or Chief to which the rule of privileges enacted by section 86 could be applicable.

Thus it appears that when a suit is instituted not against the Prince himself, but against a business concern run by the State or a Ruling Prince, it cannot be said that it is one against the Prince himself.

EXTRA-TERRITORIAL CIVIL JURISDICTION

THE general rule of Private International Law with regard to Jurisdiction over foreigners is "Extra territorium Jus dicenti non paratur legis extra territorium non obligant" . An authority, who legislates or administers justice beyond his own realm may be safely disobeyed beyond his jurisdiction And the presumption is that the legislature does not intend to exceed its jurisdiction Another general rule to be remembered is that all legislation is territorial and is consquently applicable only to such foreigners as come into the country or have made themselves subject to the jurisdiction of the court of that country. A very important judgment of the Privy Council on this point is in the case of Gur Dayal Singh Versus Raja of Faridkot (21 I A. 171 P. C.). In this case the Raja of Faridkot obtained a decree in a court in Faridkot State against the defendant, on account of the defendant having incurred certain liabilities in relation to his duties as the treasurer of Faridkot State. He was not a resident of the State and did not submit to its jurisdiction. On the basis of that decree a suit was instituted against the

defendant in the Punjab Courts. Their Lordships of the Privy Council held that a decree obtained against the defendant under these circumstances and passed by the State courts was a mere nullity In the course of their judgment, the following important observations were made "Faridkot is a native State, the Raja of which has been recognised by Her Majesty as having an independent civil, criminal and fiscal jurisdiction The judgments of its courts are and ought to be regarded in Her Majesty's courts of British India as foreign judgments The Additional Commissioner of Lahore thought that no action could be brought in Her Majesty's courts upon a judgment of a native State, but in this opinion Their Lordships did not concur ... . .. Under these circumstances, there was, in their Lordships' opinion, nothing to take this case out of the general rule, that the plaintiff must sue in the court to which the defendant is subject at the time of suit, "Actor Sequitur Forum Rei" which is rightly stated by Sir Robert Phillomore (International Law 238 Vol. 4. S 891) to "lie at the root of all international and of most domestic, jurisprudence on this matter." All jurisdiction is properly territorial, and "extra territorium Jusdicenti, impune non paretur," Territorial Jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory, while they are within it, but it

does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory, and it may be exercised over moveables within the territory; and, in questions of status or succession governed by domicile, it may exist as to persons domiciled or who when living were domiciled within the territory. As between different provinces under one sovereignty e. g. under the Roman Empire) the legislation of the Sovereign may, distribute and regulate jurisdiction; but no territorial legislation can give jurisdiction which any foreign court ought to recognize against foreigners who owe no allegiance or obedience to the power which so legislates. In the personal action, to which none of these causes of jurisdiction apply, a decree pronounced in absentem by a foreign court, to the jurisdiction of which the defendant has not in any way submitted himself, is by International Law an absolute nullity He is under no obligation of any kind to obey it, and must be regarded as a mere nullity by the courts of every nation, except (when authorised by special local legislation) in the country of the forum by which it was pronounced. These are doctrines laid down by all the leading authorities on International Law, among others, by Story (Conflict of Laws; 2nd Edition, Ss. 546, 549, 553, 554, 556, 586) and by Chancellor Kent (Commentaries, Vol. I p. 284 Note (c), 10th Edition) and no

exception is made to them in favour of the exercise of jurisdiction against a defendant not otherwise subject to it by the courts of the country in which the cause of action arose, or (in cases of contract) by the courts of the Locus solutionis. In those cases, as well as all others, when the action is personal, the courts of the country in which a defendant resides have power and they ought to be resorted to, to do justice."

In A. I. R 1927 Sind 160 it has also been held that, "it is a fundamental principle of International Jurisprudence that a sovereign of a country acting through the courts thereof has no jurisdiction over any matters with regard to which he cannot give effective judgment or which he can render effective only by interfering with the authority of a foreign sovereign or the jurisdiction of foreign court, (Dicey's Conflict of Law, Edition III, page 40). An effective judgment has been defined to mean a decree, which the Sovereign on whose authority it is delivered has in fact the power to enforce against the person bound by it (Dicey page 42).

But in recent judgments it has been held that where the cause of action against a non-resident foreigner arises within the jurisdiction of a court, it is sufficient ground to confer jurisdiction on that court. A very interesting and important judgment on this point is in the case of Baroda State Railways

Vs Habibullah (A.I.R. 1934 Allahabad 740). Although this judgment of the Allahabad High Court has been reversed by their Lordships of the Privy Council in 1938, yet unfortunately no decision has been given in the judgment of the Privy Council as to whether Section 20 C. P. C. gives the power to British Indian Courts to entertain cases against foreigners when the cause of action arises within the local limits of the British Indian Courts. The Allahabad High Court held that U/S 20 C. P. C. the British Indian courts can entertain suits against the absent foreigners when the cause of action arises within their jurisdiction, regardless of the rule of the international comity and in doing so relied upon the judgments of the Bombay High Court, (1893) 17 Bombay 662 and (1901) 25 Bombay 528 where it was definitely held that under the Civil Procedure Code, British Courts are empowered to pass judgments against a non-resident foreigner provided that the cause of action has arisen within the jurisdiction of the court pronouncing the judgment. The Madras High Court has also taken the same view in a full bench case [(1906) 29 Madras 239]. C. J. White has observed in that judgment, "It seems to me that to give jurisdiction over an absent foreigner where the cause of action against him arises within the local limits of the jurisdiction of the court, is the legitimate exercise of Sovereign right.....Sir V. Bhashyam

Ayyangar's proposition was that it was contrary to the principles of the international law for a court to exercise jurisdiction over an absent foreigner solely upon the ground that the cause of action had arisen within the local limits of the jurisdiction of the court. I do not think that more recent authorities support this proposition." In Ram Ravji Vs. Prahalad Dass (1896) 20 Bombay 133, it was held that the wordings of a passage in the Faridkot judgment amply provide for the jurisdiction of the court, when we have local legislation to that effect. The passage of the Faridkot judgment referred to says "A decree pronounced in absentem by a foreign court to the jurisdiction of which the defendant has not in any way submitted himself is by International Law an absolute nullity. He is under no obligation of any kind to obey it and must be regarded as a mere nullity by the court of every nation except (*when authorised by special legislation*) in the country of the forum by which it was pronounced"

An observation of their Lordships of the Privy Council in (1903) 26 Madras 544 also supports the view taken by the Bombay and Madras High Courts. They observed as follows, "Their Lordships see no reason for doubting the correctness of the decision of the case of Girdhar Damodar Vs. Kassigar Hirangar (17 Bombay 662) where the defendant was a native of Cutch and the cause of action arose within the

local limits of the jurisdiction of the British Indian Court in which the action was brought." Now it will be seen, that according to this view a suit against a non-resident foreigner would be maintainable in the British Court if the cause of action against him has arisen within the local limits of the British courts. This later pronouncement of their Lordships of the Privy Council has been interpreted by the High Courts in India to mean that the view taken in the Faridkot case is not applicable to those cases in which the cause of action has arisen within the local limits if the British Indian Courts. In A. I. R. 1934 Allahabad 740, Justice Niamatullah has remarked that the position and constitution of Indian States are so peculiar that abstract principles of International Law, when applied to concrete cases arising in British India will lead to anamolous results. He further observes that, "At first sight there seems an inconsistency between a dictum of their Lordships of the Privy Council in the Faridkot case and their reference with approval to Girdhar Damodar Vs. Kassigar Hiranagar already quoted. It seems to me that the two are easily reconcilable. In the Faridkot case the question was whether the court of one Indian State had jurisdiction over a person residing in another Indian State. Their Lordships held in the negative, even if the cause of action had accrued within the jurisdiction of the Faridkot court, the

reason being that one of these States had no authority to confer jurisdiction upon its court as to effect residents of another State, assuming the law in force in Faridkot conferred jurisdiction upon its courts against foreigners in the manner laid down by Section 20 C. P. C. In the case of Girdhar Damodar Vs Kassigar Hiranagar, the question was whether a court in British India had jurisdiction against a resident of Cutch, where the cause of action arose within its jurisdiction. The answer in the affirmative given both by the Bombay High Court and their Lordships of the Privy Council is easily supported on the hypothesis which I have discussed above, namely, that the Indian Legislature has enacted Section 20 C. P. C. so as to confer jurisdiction on the British Indian Courts as regards persons residing in Indian States who owe allegiance to the Crown from whom the Indian Legislature derives its authority."

I am afraid there is no justification to interpret the later judgment of the Privy Council in the way suggested above. If the arising of the cause of action is held to be sufficient for conferring jurisdiction on British Courts against foreigners, the same argument will have to be applied in the case of Indian State courts and the Faridkot judgment will have to be looked upon as no longer good law. At the same time, we cannot ignore the fact as to

how far the judgments of foreign courts could be rendered effective in the jurisdiction in which it is sought to be executed. In Ram Bhat Vs. Shanker 25 Bombay 528 the learned Judges of the Bombay High Court held that under the C. P. C. British courts are empowered to pass judgments against a non-resident foreigner provided the cause of action has arisen within the jurisdiction of the court pronouncing judgment. But it was contended in that case that the points for the determination were whether the court was judicially competent to entertain the action and that how far its judgment would be effective. It was held that the competence of the court was to be determined with reference to the provisions of Section 20 C. P. C. and the effectiveness of the judgment by reference to the rules of the international law. It was also remarked in Raja Bhai Narain Vs Karim Mohd. (A. I. R. 1919 Madras 883), that "A municipal court is entitled to exercise its jurisdiction over a non-resident foreigner where the cause of action arises within its jurisdiction. The question whether its decree can be enforced against him in the foreign State is a question for the disposal of that State." In this connection Justice Rachpal Singh has also opined in the aforesaid Allahabad case that "It is clear to me that if the British Court has the power to pass a judgment having regard to the provision of C. P C. then the

other question as to whether or not it would be effective every where need not be considered." I will deal with the question of execution of decrees from British Indian Courts in Indian States elsewhere, suffice it to say here, that the British Indian legislatures have no power to enforce the execution of their decrees in Indian States and the Policy of the Indian legislature has been to leave such decrees to be executed in the courts of Indian States pursuant to the legislative authority of such State, whenever the Indian States agree to do so on basis of reciprocity

Now I come to the arguments employed in the aforesaid important judgment of the Allahabad High Court (A.I.R 1934 Allahabad 740) for holding that under section 20 C.P C the British Indian Courts had jurisdiction over absent foreigners as also for holding that the principles of international law could not be applied to Indian States. Justice Niamtuallah has observed "The jurisdiction of the subordinate Judge of Agra is in substance questioned on the ground that the Indian legislature had no power to confer jurisdiction upon courts in British India to entertain suits against residents in Indian States, where cause of action arose within their jurisdiction. I do not think that this ground can prevail as it can not be said that a resident of an Indian State owes no allegiance or obedience to the

former which legislates.....The power to legislate possessed by the Indian Legislature is derived from Act of Parliament to which undoubtedly every Indian State and its subjects owe allegiance and obedience." His Lordship then referred to the Indian Council Act of 1861 and also to the amending Act of 1865 to show that the British Parliament could legislate "For all British subjects of Her Majesty within the dominions of Princes and States." His Lordship further goes on to observe that, "the power thus conferred upon the Governor-General is very wide and comprehensive and it cannot be doubted that any law passed by the legislative authority in British India which has received the assent of the Governor-General must be recognised as binding on those residing in Indian States so far as such law effects them .....A decree passed against a person residing in an Indian State by a court having jurisdiction U/S. 20 C P C. cannot be disregarded as one passed without jurisdiction by any court in India or one *situate in an Indian State; all of which owe allegiance to the Crown, from whom legislative authority is derived by the Indian legislature which conferred jurisdiction upon the court passing it.*"

As a matter of general rule, residence, permanent or temporary, within the territorial jurisdiction of the court is necessary to make a defendant, who is a foreigner subject to its jurisdiction The reason of

this rule is stated by Story in his Conflict of Laws that "No sovereignty can extend its process beyond its own territorial limits to subject either persons or property to its juridical decisions". Thus the cause of action alone is not a ground of jurisdiction recognised by International Law. It is, however, held to be otherwise where the non-resident foreigner is a subject of the Sovereign power which legislates (See Chitaley's C. P. C. Vol. 1 page 232). It has been held in I.L.R 28 Calcutta page 641 (Moazzim Hussain Khan Vs. Raphael Robinson) that this principle could not apply when the foreigner is a native of British India and the court which passed the judgment was the Queen's Bench Division of the *High Court of Justice in England*. *Their Lord*ships have observed, "Now can it be said that the same reason holds good when the foreigner is a native of British India and the court which passed the judgment in question was the Queen's Bench Division of the High Court of Justice in England Though the defendants here are foreigners, they owe allegiance to the common sovereign of England and British India and are subject to the Supreme legislative authority in the British Empire It is true that India has a separate legislature and an Act of Parliament does *not apply to India unless India is* expressly included in its operation; but that is based upon conveniences of legislation and not upon any

want of authority in the Parliament to legislate for India. If, therefore, the Supreme Legislature in the British Empire authorises an English court in any class of cases to exercise jurisdiction over a non-resident foreigner, by reason of the cause of action arising within its jurisdiction, and the foreigner is a native of British India, he cannot treat the judgment passed as a nullity, merely because he did not reside within the jurisdiction of the court which passed it." Thus the fact, that the defendant is a subject of the British Sovereign owing allegiance or obedience to him, has been recognised as a ground of jurisdiction by International Law. But it must be clearly understood that in the absence of powers conferred by the Sovereign legislature, the legislature of one country cannot confer jurisdiction over non-resident foreigners of another country even though both the countries owe allegiance to the same sovereign power.

In 3 Indian cases 190 (1909) it has been held that though Ceylon and British India owe allegiance to the same sovereign, the enforceability of the judgments of the courts of either country on those of the other was guided by the rule of private International Law, viz., that the judgment of a Foreign Court passed against the defendant in absentem cannot be enforced against him in a court in British India. It has also been held in this judgment of the

Madras High Court that a decree based on a contract imposing personal obligation upon an absent foreigner is not countenanced by the Comity of nations only because the defendant entered into the contract in the territory of the forum which passed the decree. Similarly the legislature of the Indian State of Pudukottah has been held to be unable to confer powers on the courts at Pudukottah to try cases against persons residing in British India on the ground that the cause of action arose in Pudukottah. The decree passed in such cases by the court at Pudukottah was not enforced in British India U/S 13 C. P. C. (1 Madras 196). In another case Nall Vs .Mohamed 20 M. 112, the defendant was domiciled in and was a resident of British India and had not appeared to defend the suit at Kandy in Ceylon, although he was a partner in a firm which carried on business at Kandy. It was held that the court at Kandy had no jurisdiction over the defendant although the cause of action arose within the jurisdiction of the Kandy Court.

If the British Indian Courts persistently hold that Section 20 C. P. C. gives jurisdiction to British Indian Courts to pass a decree against residents of a foreign State, if the cause of action against them arose within the territorial jurisdiction of such courts, such a decree cannot have any effect against State subjects within the territorial limits of that State

and should be considered for all purposes an absolute nullity and is not enforceable against the defendant within the State simply on the ground that the decree has been passed by a court in British India, which derives its authority from the Crown, to which Indian States owe allegiance.

Justice Rachpal Singh of the Allahabad High Court has also observed in the above mentioned Baroda State Railway case that the rule of International Law which is based on the principle of "absolute independence of the Sovereign of recognised superior authority," cannot be applied to the Princes in India for the simple reason that they are subordinate to the authority of the British Crown. He has observed, "A Ruling Prince can be sued in a British Court. He can be arrested and his property can be attached provided that the sanction of the Governor-General is obtained. The Government of India has power to hold an inquiry into his conduct. The Government has power to depose him..... .....The British Crown is the Paramount Authority in India The Ruling Princes owe allegiance to the British Crown as Sovereign power. And it would certainly be a misnomer to style Indian States as "Nations". They are dependent States. I do not think that the rules of private International Law can be made applicable to such States." Justice Niamutulla has remarked in the same judgment that it is not necessary to

consider the question whether a person residing in an Indian State should be considered a foreigner or a British subject as in either case the Governor General of India in Council is authorised to make laws applicable to them. In Ram Bhat Vs. Shanker [(1901) 25 Bombay 528] it has also been remarked "It may well be doubted whether it would be correct in such case as this to say that the assertion of jurisdiction by the British legislature is inconsistent with comity of nations or with the established rules of private International Law such as would be applicable between England and say, France or Germany"

Apart from an academic discussion about the constitutional position of the Indian States in the International World, it has been well established that, for purposes of the British Indian legislation, the territories of Indian States are foreign territories. Sir C Ilbert has observed in his treatise on Government of India page 420 Edition III that the territory of an Indian Prince is for the purposes of Municipal Law not a British territory and their subjects are not British subjects. The laws of England do not apply to the State subjects. The King in Parliament is precluded from legislating for the Indian States. The Secretary of State for India's letter dated 28-9-1927 to the Secretary General of the League of Nations relating to the ratifications of conventions of the International Labour Organisation

by Indian States, makes this abundantly clear..... "That exact relations between the various States and the Paramount Power are determined by a series of engagements and by long established political practice. These relations are by no means identical, but, broadly speaking, they have this in common, that those branches of internal administration which might be affected by decisions reached at International Labour Conferences are the concern of the Rulers of the States and are not controlled by the Paramount Power. The legislature of British India, moreover cannot legislate for the States nor can any matter relating to the affair of a State form the subject of a question or motion in the Indian legislature." It has also been held in Empress Vs. Keshub Mahajan and others, (8 C. 985 F. B.) that the territory of Indian States is not British territory. The certificate which the India office gave to assist the court in assessing the status of the Gaekwar of Baroda as a foreign Ruling Prince further illumines the position....."The Gaekwar of Baroda has been recognized by the Government of India as a ruling Chief governing his own territories under the suzerainty of his Majesty. He is treated as falling within the class referred to in the Interpretation Act 1889, Sec. 18 Sub-Section 5, as that of native Princes or Chiefs under the suzerainty of His Majesty exercised through the Governor-General of India.

The British Government does not regard or treat His Highness' territory as being part of British India or his Majesty's dominions, and it does not regard or treat him or his subjects as subjects of his Majesty. But, though His Highness is thus not independent, he exercises as ruler of his State, various attributes of sovereignty, including internal sovereignty which is not derived from British Law, but is inherent in the ruling chief of Baroda, subject however to the suzerainty of His Majesty, the King of England ....." (Statham Vs. Statham etc. 1912 page 92).

The Indian Council Act referred to in the aforesaid judgment applies only to foreigners and British subjects and cannot be held to apply to a person residing in an Indian State as an Indian State subject. The Governor-Genaral is not authorised to make laws to apply to Indian State subjects residing in Indian States. In fact Section 65 of the Government of India Act, 1919 which defines the powers of the Indian Legislature, shows that it has no power to make any laws affecting the subjects of the Indian States. The provision in the Indian Council's Act of 1861 regarding foreigners and British Indian subjects was found necessary in view of the international obligations of the Paramount Power. The limitation of the Sovereignty of Indian States in respect to their foreign relations removed all possibilities of affording protection by the Indian

States to their own subjects staying in foreign countries. The natural result was that the authority which guided the foreign policy of the States, also guarded their subjects abroad, and in 1876 the Parliament declared that "the subjects of such Princes and States are, when residing or being in places hereinafter referred to, entitled to the protection of the British and receive such protection equally with the subjects of Her Majesty." While claiming to give protection to State subjects in foreign countries the British Government also claimed to protect the lives and property of foreigners staying or residing in the States and secure them the enjoyment of just rights and privileges. But it should be realized that the British Government while fulfilling this function, is only undertaking an inter-statal obligation, more or less analogous to the League of Nations. The formal authority under which these powers of jurisdiction were exercised was originally the Royal prerogative which was in due course codified under the Indian Foreign Jurisdiction Order in Council 1902. The draft of the Instrument of Accession received from the Government of India by the Rulers of Indian States for execution by them, if the Rulers agree to enter the Federation as contemplated under the Government of India Act, 1935, contains a clear clause to show that the Parliament does not exercise any

legislative authority within the States. The clause runs as follows, "And whereas the said Act cannot apply to any of my territories save by virtue of my consent and concurrence signified by my accession to the federation." Section 101 of the Government of India Act 1935 also expressly provides that nothing in the Act should be construed as empowering the federal legislature to make laws for a State otherwise than in accordance with its Instrument of Accession and any limitation contained therein.

The amended definition of "Indian States" in Section 311 of the Government of India Act, (1935) is also significant, and it runs as follows :—

"Indian States" means any territory, not being part of British India, which His Majesty recognises as being such a State, whether described as a State, an Estate, a Jagir or otherwise. In the General Clauses Act the word "India" is defined as "British India" together with any territories of any Indian Prince or Chief under the suzerainty of Her Majesty. The word "Suzerainty" is defined in Statham Vs. Statham and His Highness the Gaekwar of Baroda (1912-P 92) as a term applying to certain international relations between two sovereign States whereby one, whilst retaining a more or less limited sovereignty acknowledges the supremacy of the other. Thus suzerainty of the British Crown does

not affect in any way the integrity or the internal sovereignity enjoyed by a ruling Prince within his own territory. The allegiance by the Rulers of Indian States to the British Crown might affect or limit their sovereignty in their foreign affairs but it has nowhere been taken to justify any interference with their internal sovereignty and autonomy. Many and various as may have been the forms of intervention by the British Government in the affairs of Indian States and large as may have been the Political control exercised over them, no assertion has ever been made of exercising territorial sovereignty over the Indian States and no legislative power has ever been claimed within the States. Rather the position of the Rulers has always been respected and many of the functions commonly regarded as attributes of sovereignty have been preserved to them. [See 3 C.L J. 395 P. C. Hem Chand Deochand Vs. Azam Sakarlal Chhotam Lal and the Taluka of Kotada Sangna Vs. the State of Gondal I L. R 33 C 219].

In a full Bench case of the Calcutta High Court (8 Calcutta 985) Justice Garth has observed, "We find that the Indian Government and the Maharaja have for a long series of years concurred in considering and treating this territory as no part of British India and when we also find that Acts of the Indian Legislature, which have been passed for

and have been acted upon throughout British India, have never been acted upon or considered to be law in this territory, I must say it seems to me that such evidence, in the absence of any cogent proof to the contrary, ought in British Indian court, to be almost conclusive on the point. (Whether the territory of Mohourbhanj forms part of British India or not)." He further remarked that in his opinion the acts of interference by the British authority, which may have been intended rather as friendly aids to the Maharaja in the management of his dominions, than as evidencing any wish on the part of the Indian Government to take the rule of the territory out of the Maharaja's hands. In another case 16 Calcutta 667 (in the matter of Bichattarnand Das Vs. Bhagbat (Perai) it was held that British Indian Law had no application to the Tributary Mahal of Kheonjur which is on precisely the same footing in that respect as Mohourbhanj

In A I.R. 1918, Bombay 236, it has been held by the Bombay High Court that "we have no power to legislate for native States and feeling is so sensitive on these points that it is easily intelligible that our legislature would have refrained from inserting any provision in our statute which might have had the appearance of asserting a right over the courts of a native State."

Thus it is clear that the mere fact that the

Indian States owe Political allegiance to the British Crown is not sufficient ground for not observing the general principles of International Law with regard to the exercise of Jurisdiction over subjects of Indian States who are not residents of British India and the British Crown or its Agents have no power to make laws in respect of the territories comprised in Indian States. The legislature of British India cannot legislate for the States nor can any matter relating to the affairs of a State form the subject of a question or motion in the Indian legislature.

FOREIGN JUDGMENT

FOREIGN Judgment has been defined in Section 2 (6) Civil Procedure Code as the judgment of of a foreign court. U/S 2 (5) C. P. C. a foreign court means a court situate beyond the limits of British India, which has no authority in British India, and is not established or continued by the Governor-General in Council Thus for the purposes of British India the courts in British India cantonments and residency bazars are not foreign, as they are established or continued by the Governor General in Council Similarly the Privy Council is not a foreign court as it has authority in British India The courts of Indian States have been held to be foreign courts in British India. The courts in British India are taken as foreign courts by the Indian State courts, because the courts in British India have no authority in Indian States. A foreign judgment can be enforced in a territory beyond the limits of the court passing the judgment in the following ways :—

(1) By instituting a suit on such foreign judgment in the court in whose jurisdiction, the decree is sought to be executed.

(2) In cases of judgments of the courts in British India or in Indian States who have agreed to execute the decree of foreign courts on a reciprocal basis, by the execution of the decrees of the foreign courts as if they had been passed by the court within whose jurisdiction the decree is sought to be executed.

As a matter of general rule, a State is not bound under the Law of Nations to enforce within its territories the judgment of a foreign tribunal. But in countries where a sound system of jurisprudence prevails, such a judgment is enforced on the principle that where a court of competent jurisdiction has adjudicated that a certain sum is due from one person to another, a legal obligation arises to pay that sum, on which an action to enforce the judgment can be maintained. In Russell Vs. Smith cited in 2 Madras 400, it has been observed that foreign judgments create an obligation belonging to the class of implied contracts which are described as arising from the general implications that every man hath engaged to perform what his duty or justice requires. This is the principle on which Section 13 C. P. C. is based and it declares that a foreign judgment is conclusive as to any matter directly adjudicated upon between the same parties except in the following six cases.

1. Where it has not been pronounced by a court of competent jurisdiction.

2 Where it has not been given on the merits of the case.

3 Where it appears on the face of the proceedings to be founded on an incorrect view of International Law.

4. Where the proceedings in which the judgment was obtained are opposed to natural justice.

5. Where it has been obtained by fraud.

6. Where it sustains a claim founded on a breach of any local law.

In A. I R. 1918 Madras 949, Justice Phillip has remarked, "the principles on which a suit can be brought on a foreign judgment is that the rights of the parties have been already investigated and determined by a competent tribunal. In an action on a foreign judgment not impeached for fraud, the original cause of action cannot be reinvestigated if the judgment was pronounced by a competent tribunal having jurisdiction. This principle applies alike to a judgment in personam, to a judgment in rem and to a judgment or sentence of divorce or any judgment having reference to status." Justice Abdur Rahim opined in this case that the courts of a foreign country have no jurisdiction to adjudicate upon the title or the right to the possession of any immovable property not situate in such country or generally to give redress for any injury in respect of any immovable not situate therein. In his opinion it makes no

difference that the parties affected by the judgment are domiciled in foreign territory and its court has, therefore, jurisdiction over them in personam.

There was at one time a conflict of opinion whether a judgment of a court of an Indian State could be enforced in British India by a suit on the judgment. The Bombay High Court held that judgment of a court of Indian States could not be enforced in British India on the ground that judicial enquiries in Indian States were not conducted with intelligence or integrity. In 8 Bombay 593, Sir Sargent had remarked in 1884 that "the administration of justice in the courts of Indian States does not justify that degree of confidence in its intelligence and integrity which are necessary to raise the implied obligation upon which the action on a foreign judgment rests; and that although there may be some courts whose judgments are entitled to respect, the English courts are not in a position to draw distinctions which would be necessarily invidious." On the other hand the Madras High court held that "A judgment of a court of an Indian State could be acted upon by a suit on the basis of that judgment." In order to remove this conflict, Act VII of 1888 added a clause to Sec. 14 of the code of 1882 to the effect that a suit could be brought on such judgment, but that the British Indian court was not precluded from making an enquiry into the merits of the case in

which the judgment was passed. By this enactment the finality of the judgments of the foreign Asiatic courts was taken away by the legislature, while maintaining the finality of the judgments of the European and American courts In 24 B. 86, a suit was brought on the basis of a judgment of a court in the territory of His Exalted Highness, the Nizam of Hyderabad. The Bombay High court in this case overruled the earlier decisions of that court (8 B. 593) and held that the addition to Sec. 14 by the passing of the C. P C Amendment Act VII of 1888 clearly contemplates the institution of suits on the judgment of a foreign court in Asia providing only that the court in which the suit is instituted shall not be precluded from enquiry into the merits of the case in which the judgment was passed. Their Lordships of the Bombay High Court mainly relied on the judgment of the Privy Council in Gurdayal Singh Vs. Raja of Faridkot, wherein the Privy Council held that there was no ground for supposing that no suit will lie upon the judgment of a recognised foreign Indian State. This was also the view taken by the Allahabad High Court in the Collector of Moradabad Vs. Harbans Singh (21 A 17) which was a suit brought on a foreign judgment of a court of Rampur State.

The clause regarding the further enquiry into the merits of the case by the British Indian Courts

has now been omitted and the reason was stated by the Special Committee as follows :—

"It appears to the Committee that it is not possible to maintain this distinction in the case of all Asiatic courts "

There is, therefore, now no distinction between the judgments of the courts of Indian States and other foreign judgments. A suit can be brought on such judgments and in such a suit, as a general rule, the court cannot institute an enquiry into the merits of the original claim or the propriety of the decision. In the Lahore High Court, it was argued in Mulk Shah Vs. Tara Singh (A. I. R. 1916 Lahore 330) on the reliance of Collector of Moradabad Vs. Harbans Singh (21 Allahabad 17) and Ramji Das Vs. Mukandilal (102 P. R. 1892), that a decision of the Poonch State should be considered on merits in the Punjab courts. His Lordship of the Lahore High court observed in this case "It is quite possible that such rules as obtained in British India, would not in a more rough and ready court of a foreign State, be regarded as being of an imperative force even if in such a State, they are of legal application. But whether they have any force or not or whether or not they have been disregarded it is impossible to hold, as counsel for the respondent argues, that in the face of the proceedings they are founded on an incorrect view of laws in force in British India, and

for the rest it is only necessary to say that the rulings cited by Counsel for the respondent relate to cases under Act XIV of 1882 decided with reference to the provisions of the concluding portions of Section 14 of that Act and that that part of Section 14 of Act XIV of 1882 has disappeared *from* Section 13 of Act V of 1908."

The judgments of foreign courts cannot also operate as resjudicata as foreign courts are not competent to try such subsequent suits in other foreign States. In a case one Nawab Mohd Altaf Ali Khan was the owner of considerable property situated partly in Bareilly and partly in Rampur State. Upon the death of Nawab Mohd Altaf Ali Khan, dispute arose between the plaintiffs and the defendants as to the title to the property situated in both places. The plaintiff instituted a suit before the subordinate judge of Bareilly for a declaration of their title in respect of so much of the property as was situated in the district of Bareilly That suit resulted in favour of the plaintiff. While it was pending; the defendants instituted another suit in Rampur claiming possession of the property situated in Rampur. Thereupon, the plaintiff sued for a declaration that the judgment of the Bareilly court would operate as resjudicata in the Rampur court. It was urged that U/S 13 C P C. the judgment of Bareilly court was conclusive between the parties.

Their Lordships of the Privy Council held in A. I. R. 1916 P. C. 136 that the subordinate Judge in Bareilly was not competent to try the subsequent suit in respect of the property which is situated in Rampur, and, therefore, the judgment of the subordinate Judge of Bareilly does not operate as resjudicata in Rampur u/s 11 C P.C. As for the argument that the foreign judgment was conclusive between the parties, Their Lordships remarked, "In our judgment it is only in proceedings based upon foreign judgments that the question of the affect of the foreign judgment can properly arise."

In cases where foreign court follows another limitation law and passes judgment on that basis, such a judgment cannot also be questioned in a British Indian Court on the ground, that if the suit upon which the foreign judgment was passed had been brought in British India it would have been held to be time-barred. A suit was brought in British India and was founded on a judgment passed by a court of Dholpur State. It was pleaded that the judgment of the Dholpur Court could not be operative in the court in British India in as much as it proceeded on a refusal to recognise the law of British India in a case in which such law was applicable It was also argued that the Dholpur Court has no jurisdiction. This case has been reported in A.I.R. 1934 Allahabad 161. Their Lordships of the High

Court rejected the argument of want of jurisdiction in as much as the defendants themselves appeared and contested the claim in the Dholpur Court. In doing so they relied on the decision in Emanuel Vs. Symon (1908-I.K.B. 302) where it is laid down that a foreign judgment must be enforced by the courts in England in every case in which the judgment-debtor had voluntarily appeared before the foreign court which passed the judgment.

As regards the second plea, Their Lordships observed, "the second plea is as follows: If the suit, upon which the foreign judgment was passed, had been brought in British India, it would have been held to be time-barred under the law of limitation in operation in British India But the law of Dholpur is not the same as the law in British India and the remedy in Dholpur was not then time-barred. This is a case in which it cannot be suggested that there has been refusal to recognise the law of British India, where such law was applicable. The general rule is that a court which entertains a suit on a foreign judgment cannot institute an enquiry into the merits of the original action or into the propriety of the decision, and that rule applies here"

Having regard to the language of Section 13 it is also open to the court executing the decree to consider whether, for any of the objections stated in Section 13, the judgment is invalid and to determine

finally whether it is enforceable in a foreign court or not. It was held in 39-M 24 (Full Bench) that it is not open to the court to order execution where it finds that a valid objection to the decree has been made out.

the case as one suitable for trial in British India, and when a warrant U/S. 7 Extradition Act has once been issued by the Political Agent after having considered the desirability or otherwise of the trial in British India, he could not issue a certificate u/s, 188 Cr. P. C. at the instance of the accused. But the Bombay High Court held in 13 Criminal Law Journal 537 that the direction or admonition in the aforesaid rule 3 did not control or purport to control section 188 Cr. P. C. and, therefore, the certificate issued by the Political Agent was good.

In Jath State a similar case occurred which placed the High Court of Bombay and the Government of Bombay in an awkward position. A person from Solahpur District was involved in a Criminal case. The Political Agent and Collector of Bijapur granted the warrant of arrest but the accused surrendered himself to the Political Agent and pleaded that as he was a British subject, he should be tried in British India. On this the Political Agent ordered his trial to be held in British India.

The Durbar protested against this order which was against extradition rules, on which he quashed it and directed the handing over of the accused to the Jath State. On appeal by the accused the Sessions Judge of Bijapur referred the matter to the High Court. The High Court decided that the

quashing of the order was wrong and ordered the accused to be tried in a British Court On the matter being brought to the attention of the Bombay Government by the Durbar, it admitted the mistake done in the matter but refused to over-ride the decision of the High Court. It, however, undertook to press the question of jurisdiction if a similar case arose in future.

Thus where a person commits an offence outside British India and is later on found in British India there are two courses open. He can be tried in British India U/S 188 Cr. P. C. if the case falls within its purview, or, he can be arrested and sent to the State where he committed the offence to take his trial there under the Extradition Act. Section 188 Cr. P C. of course applies only in cases where the accused is found at any place within British India. But the expression is not restricted to cases where a person can be said to be 'discovered' in British India. It includes cases where the accused is brought by the Police to a place in British India from a place outside it In Emperor Versus Maganlal—6 Bombay 62½—it was held that an Indian subject of Her Majesty arrested in an Indian State and brought into a British District under arrest must be held to have been found in that district, and could be tried there for the offence committed in the State. Moreover, the

illegality of the arrest under which the accused is brought into British India from a foreign place does not affect the jurisdiction of British Indian Courts under this Section (See 35 Bombay 225).

The absence of the certificate of the Political Agent required by section 188 Cr. P. C was an absolute bar to the trial of a case to which the provisions of that section apply, as has been held in 19A 109. In 13 Madras 423, it is also said that the absence of the certificate required by section 188 is an absolute bar to the trial of a case in which it is condition precedent. In 5 Lahore 416, it was held that the defect could not be cured by a subsequent production of such a certificate But it has now been held in some cases that there is nothing in the proviso to section 188 Criminal Procedure Code, which makes the obtaining of the certificate illegal, if it has been obtained after the enquiry has begun or even the charge has been framed. In 16 Lahore 73 the absence of a certificate during the earlier stages of a trial was held not to be a fatal defect but a mere irregularity. So too in A.I R 1925 Sind 88 and 11 Cr L J 543 In 47 Bombay 907 it was also contended that the absence of the certificate u/s 188 was not fatal, if the certificate has been obtained subsequently.

But the provisions of section 188 Cr. P C can be invoked only when an offence is committed

beyond the limits of British India In a case reported in A I R 1937 Madras 273 the learned Judge has held that the Child Marriage Restraint Act makes it an offence to celebrate child marriages and that the Penal law applies not only to the celebrations of such marriages within British India by anyone but also to the celebrations of such marriages even outside British India by Native Indian Subjects He has remarked in his judgment, "Reference may be made in this connection also to sections 186 and 188 Cr. P C. The Penal Code as well as the Child Marriage Restraint Act are extra-territorial to this extent, namely that if native Indian subjects commit offences punishable under these laws even outside British India, they are liable to be tried and punished when found in British India." But in order to make the offence punishable by the British Indian Court u/s 188 Cr. P C., it has to be seen that the act committed amounts to an offence according to the law of the territory in which the offence was committed. The explanation of Section 4 I.P.C., which confers extra-territorial jurisdiction on British Indian courts, provides that the word "offence" includes every act committed outside British India, which if committed in British India would be punishable under the Indian Penal Code. But it has been held in A.I R. 1935 Bombay 437, that the Child Marriage Restraint Act contains no provision similar

to Section 4 I P.C and the prosecution must prove that the Act makes Penal a child marriage performed outside British India, before Section 188 Cr P. C can be applied for trial of an offence under the Act The Act is limited in its operations to British India and only strikes at marriages contracted within British India. A child marriage contracted outside British India (at Goa) does not amount to an offence to which Section 188 Cr P. C. can apply, and persons permitting such marriage cannot be prosecuted and convicted in British India.

It is a well established principle of law that an act authorised by Law of the country in which it takes place cannot be the subject of a legal proceeding in another country where such an act may amount to an offence (Story's Conflict of Laws. Woodroffe has pointed out in his commentary on the Cr. P.C that all the sections in Chapter 15 are to be read subject to the general rule that an act committed on land outside British territory by a foreigner not being a servant of the King is not an offence. Acting upon that principle the courts in British India have always declined jurisdiction against foreigners for offences committed outside British India *i.e*, theft although the stolen property was found in British India (1 Madras 171), (1 Bombay 50), (6 Calcutta 307), (10 Bombay 186) and (2 Bombay L. R. 337); for Criminal breach of trust (5 Madras 23)

and (15 I. C. 836); for being in possession in a Native State of property stolen from British India (9 Allahabad 523) and (A.I.R. 1914 Calcutta 725); for kidnapping though the person kidnapped is concealed in British India (33 Indian Cases 304); for instigating the offence of murder outside British India although the offence is committed in British India (10 B.H.C.R. 356); of abduction in a native State although the abducted woman was brought by the accused into British India (20 I. C. 599) and (24 I. C. 599). In fact the spirit of Chapter 15 of the Criminal Procedure Code seems to be intended to enlarge as much as possible the ambit of the sites in which the trial of an offence might be held and to minimise as much as possible the inconvenience which would be caused to the parties by the success of technical plea regarding the jurisdiction of local courts.

It follows from what has been said above that an act committed on land outside British territory by a foreigner not being a servant of the Queen, is not an offence triable by British Courts under the Criminal Codes. The reason is that where it is sought to punish a person who is not a British subject as an offender in respect of a certain act, the question is not merely, "Where was the act committed," but that "Was the person at the time when the act was done within the British territory."

Generally speaking the extra—territorial rights are very sparingly exercised by the Paramount Power and certificates u/s 188 Cr. P.C. are not issued frequently. The grounds on which such a certificate could be issued are laid down in rule 3 of the Governor General's Rules dated 13th May 1904. Under this rule, the Political Agent must be satisfied that the interest of justice and the convenience of witnesses can be better served by the trial being held in British India. Under such circumstances, I do not think there would be any justification to make an encroachment over the jurisdiction of the courts situated in Indian States as almost in all cases, the convenience of the prosecution and the witnesses can be best served by an enquiry into the offence in the courts within whose jurisdiction the offence has been committed. As regards the interest of justice, it would not be fair to condemn the integrity of the courts in Indian States in a particular case before they have been allowed to take cognizance of that case Moreover, as has been admitted in 11 Cr. L. J 319, 'that although the section empowers the British Indian Courts to try offences committed outside British India in the cases specified therein, it does not affect the liability of the offender in such cases to be dealt with in the State wherein the offence was committed. In the aforesaid case, it has been observed that "Native

Indian subjects of His Majesty committing offences in a Native State are amenable to the jurisdiction of the courts of that State. All that sections 3 and 4 of the Indian Penal Code provide is that such a subject is also liable to be prosecuted in British India for any offence committed under this Code in a foreign territory, if not already tried there. In the case of Bishan Dass (Indian Cases Vol. 6 p. 640) the court held that they could find nothing in the Indian Penal Code to preclude the concurrent jurisdiction in Indian States over Indian subjects of His Majesty. The general rule of law is that the territorial sovereignty of a State is exclusive and absolute and it is susceptible of no limitation except such as are voluntarily surrendered by the Sovereign under an agreement All powers which are not expressly surrendered are taken to be retained Piggot on Extra-territoriality)

It may, however, be added that provisions have been made in Extradition Treaties between the British Government and some Indian States to the effect that if an accused person arrested in the State territory is a British subject he shall be surrendered for trial to the British authorities. For example, the Mysore treaty contains a clause, "if the persons so arrested be a British subject or other than a subject of Mysore, he shall be surrendered for trial to the British authorities." Similarly, article 3 of the

Alwar Extradition Treaty says, "that any person other than an Alwar subject committing an heinous offence within the limits of Alwar State and seeking asylum in British territory, will be apprehended and the case investigated by such court as the British Government may direct." Exactly similar treaties have been entered into by almost all States in Rajputana.

Paragraph 56 of the Butler Committee Report may also be quoted in this connection It runs as follows:—

"Some of the treaties contain clauses providing that British jurisdiction shall not be introduced into the States; and it is the fact that the States are outside the jurisdiction of the British Court, and that British Law does not apply to their inhabitants, which is the most distinct and general difference between the States and British India. Nevertheless the Paramount Power has found it necessary, in the interests of India as a whole, to introduce the jurisdiction of its officers in particular cases such as the case of its troops stationed in Cantonments and other special areas in the Indian States, European British Subjects and servants of the Crown in certain circumstances."

The law regarding the extra-territorial jurisdiction in Indian States is especially complicated and the assumption of power in this respect is generally

based on Foreign Jurisdiction Act of 1873. Mr. Panikkar says in this connection, "But it is not clear how that act can be depended upon for the exercise of jurisdiction where the right was not granted or ceded independently. As Jenkyns in 'British Rule and Jurisidiction beyond the Seas' points out; "The Act does not confer any jurisdiction on the Crown, but facilitates the exercise by the Crown and its officers of jurisdiction acquired ab-extra." The same view is upheld by Tarring in his British Consular Jurisdiction in the East. The Foreign Jurisdiction Act is, as Lord Haldane has said in Sobhuza II Vs. Millar, "really only concerned with definition and secondary consequences rather than with new principles."

There are however three important cases which seem to go against this point of view. They are R. Vs. The Earl of Crewe (1910 2 K. B. at p. 576); in re; Southern Rhodesia (1919 A.C. 211); and Sobhuza II Vs. Millar (1926 A.C. at p. 528). The judgments in these cases would suggest that the exercise of jurisdiction may be valid under an order in council or by assuming jurisdiction by the Act of State. The Foreign Jurisdiction Act was in these cases used as a machinery for promulgating laws. These cases do not give authority to the view that the Foreign Jurisidction Act gives to the Crown the right to exercise jurisdiction in the territory of a foreign prince who has neither surrendered his right nor acquiesced in its violation for a long

period of time. Before 1861 no such right was claimed or exercised by the British Government and except in the case of the States that voluntarily surrendered, there was never any legal acquisition of such right by the British Government.

With regard to the extra-territoriality exercised or claimed by the Government of India in the case of Europeans etc. and the servants of the Government residing in the territories of Indian States, the Indian States may be classified into the following four categories according to measure or degree of their jurisdiction:—

(*i*) Full-powered States which enjoy and exercise plenary jurisdiction over all persons and in respect of all offences committed within their territories.

(*ii*) States whose jurisdictional authority is restricted in respect of persons.

(*iii*) States whose jurisdictional authority is restricted in respect of offences.

(*iv*) States whose jurisdictional authority is restricted both in respect of persons and of offences.

In volume 7 of the minutes of proceedings of the Butler Committee, pages 247 to 274 deal with this subject. Sir Leslie Scott in the course of his arguments emphasised that where there is no consent of the State concerned, no extra-territorial jurisdiction can be claimed or exercised. At the same time he cited detailed correspondence of the Government

of India on this subject with the various States including Bhopal, Rewa, Patiala, Jind, Kashmir, Jodhpur and others in which, against the express terms of the Sanads and Treaties, extra-territorial jurisdiction had been claimed with regard to foreigners and European British subjects as well as with regard to the servants of the Crown. The Government of India in their correspondence with these States claimed the exercise of the extra-territorial jurisdiction on the basis of the prerogative of the Paramount Power, the fact that the British Indian Legislature had given such extra-territorial jurisdiction to its courts, and the past practice. Sir Leslie has, however, differentiated the cases of States such as Sawantwadi whose Treaty expressly provides that British subjects residing within the territory of the Raja shall be solely amenable to the British authority.

The exclusion of State jurisdiction over Europeans and Americans is a reflection of the system of capitulations once universally prevalent in Asia. Till 1861, however, the States enjoyed the right of trying Europeans and no claim had been made on the ground of lack of jurisdiction. The systematisation that followed the Mutiny brought this question to the forefront In 1861 the Nizam issued a proclamation in which he stated "Whereas many Europeans, foreigners and others, descendants

of Europeans, and born in India are resident in the territory of His Highness the Nizam and as disturbances arise amongst themselves and the inhabitants of the said territory, it is hereby made known that in the event of any dissension or dispute arising from the classes aforenamed within the said territory, except those employed by the Sirkar and its dependents, the Resident at Hyderabad, or other officer whom he may consider it desirable to vest with the same shall enquire into and punish any such offences"

In 1871, the Government of India protested against the exercise of jurisdiction by Travancore State courts over European British subjects resident in Travancore. The State claimed this jurisdiction as an inherent right of sovereignty and also as having been admitted by the British Government in 1847. The Government of India contended that the claim advanced by the State could not be recognised firstly because the British Crown was the Paramount Power in India and secondly that in 1837 the courts in British India were not competent to try European British subjects, not being servants of the Crown, for offences committed outside British India, but the law had since been amended by a Statute of the Imperial Parliament which transcended the jurisdiction of the State. This contention was repudiated on behalf of the Travancore State by

that most eminent authority, Mr J. D. Mayne who inter alia observed as follows:—

"It cannot of course go beyond the powers given by the statute; and the statute, though binding on all British subject, has no force against the sovereign of Travancore or his servants, who are not subject to the authority of the British Parliament. Even if the Statute purported in express terms to take away the jurisdiction previously exercised by the courts of Travancore, it would be simply inoperative against them. Parliament is as incapable of taking away the powers of a court in Travancore as it is of dealing with the courts of France. But I agree that neither the statute nor the proclamation contemplated any interference of that sort."

Thereafter, the Government of India were obliged to revise their opinion and the State of Travancore was allowed to retain its jurisdiction under a compromise by which the State appoints an European Magistrate and a special European Judge with limited powers of punishment. The appeal lies to the Madras High Court and clearly the law, by which the delinquent is tried, is British India Law.

After the Indian States raised the question of the legality of the jurisdiction alleged to arise from the Foreign Jurisdiction Act, the British Government has shifted the ground and claimed that their right

is based on paramountcy. In a recent communication addressed to the Patiala Government, it was stated; "In regard to European British subjects, the Government of India have remarked that the criminal jurisdiction of the British Courts over such subjects committing offences in Indian States has consistently been claimed; this jurisdiction is based on the prerogative of the paramount power."

The claim that paramountcy of the Crown is the source of jurisdiction sought to be exercised by the British Government over foreigners resident in Indian States seems clearly negatived by the Sanad granted by His Exalted Highness the Nizam in 1861 which conferred such jurisdiction on the representative of the British Government.

In many cases notifications have been issued under Indian Foreign Jurisdiction Order, 1902, appointing Political Agents as Justices of the Peace for the States, and extra-territoriality over Europeans or other Foreigners has been claimed thereunder. On a reference by the Sirmoor State to clarify the position, the Political Agent in reply referred to Section 415 of the Criminal Procedure Code and stated that the State courts could take cognizance of offences committed by European British subjects, but the process (summonses or warrants) should always be for direct attendance before the justice of the Peace.

The Indian Legislature enacted in 1865 a law in which it claimed that it had power to deal with offences committed by its Indian Officials within the territory of an Indian Prince. So long as this was merely an assumption of rights with regard to its own subjects, it was no doubt within the competence of the Indian Legislature. But when it is claimed that this Act ousts the jurisdiction of the State court it is obviously taking up an untenable position. A British Indian Official committing a crime in an Indian State is subject to the jurisdiction of the locus delicti unless the State itself has surrendered that right. A parliamentary Statute or a British Indian law can make the delinquents subjects to their own law but it is obvious that it cannot take away the jurisdiction of the State within whose territory the crime is committed.

The practice with regard to the limitation of jurisdiction over Indian Officers and privates of the Army is based on a circular issued on a reference by the Mysore Government The Mysore Government was informed that the jurisdiction of Indian State Courts in the case of Indian Officers and soldiers was limited to:—

(1) the case of a soldier who while on leave within a States commits an offence which renders him subject to arrest;
(2) that of a soldier who while on leave within

a State is arrested for an offence committed by him in that State on some previous occasion;

It was further laid down that an offence committed within the jurisdiction of the State Courts; that when arrested for crimes committed while not on leave the soldier should be handed over to the nearest military authority.

This Circular was not accepted by all the States. Patiala, though under a Regency at the time, strongly protested against it and after much argument it was agreed that His Highness' Government will generally be allowed to exercise jurisdicton over sepoys committing offences in the Patiala State Numerous cases have arisen recently in other States, when the British Government has put forward this claim and denied the rights of the States to try men, often their own subjects, who are serving in British forces. The law on this matter is yet indefinite in the sense that no agreed formula has yet been arrived at.

In the case of certain States special arrangements have been made either under the terms of the Treaty or by practice. A few illustrations are cited below:— In Kashmir, jurisdiction over the Treaty High Road going from Srinagar to Leb is exercised by two joint Commissioners, one representing the State and the other the British Government.

In Mysore State plenary criminal jurisdiction over European British subjects resident in the State is, at present, vested in the Governor-General-in-Council and the Ruler of the State can exercise only such jurisdiction as may be delegated to him by the Governor-General-in-Council. The Criminal Courts in the State have no jurisdiction to enquire into or try a charge against a European British subject. Such enquiries and trials are held by the justices of the Peace, who are themselves European British subjects appointed by the Governor-General-in-Council under the Foreign Jurisdiction Order-in-Council 1902

If the offence is such that it has to be committed to a Court of Sessions, Justices of the Peace have to commit the case to the High Court of Madras. An appeal from the decision of the justice of the Peace in the State lies to the High Court of Madras.

Police Officers and Magistrates in the State can exercise, with respect to European British subjects, only such powers as are being exercised by the Police Officers and Magistrates who are not Justices of the Peace in places in British India outside the Presidency towns.

The provisions under the Cr.P.C. as in force in this State apply to non-Biritish Foreigners (non-Biritish Europeans and Americans) Information regarding every case in which a charge is preferred against any European or American should,

however, be furnished to the Hon'ble the Resident with a view to determining the Court by which the case should be tried. A report of the trial of all such cases should also be furnished to him

The Special First Class Magistrate of the Kolar Gold Fields may, however, try such cases without previous reference to the Resident. The latter, however, reserves, the right to himself to move the Government of Mysore for the transfer of any such case from the file of the Special First Class Magistrate, Kolar Gold Field, to any other court if the circumstances appear to render such a step desirable.

In Kotah State, Sepoys and officers of the Indian Army when on duty are not triable by State Courts but when on leave or when the Political Officer hands them over to the State for trial.

State courts can try all railway servants below the rank of sub-overseers even if they are British subjects.

Government servants in Post Offices or on deputation in State hospitals can be tried for offences committed by them in the State territory only after previous intimation to the Political Agent.

In Samthar State, a specific instance happened about trying the case of a Canal employee in the State Courts. In the end it was agreed that one State Official and one Canal Official should jointly

investigate the case, and if they agree the decision should be based on their joint report. In case of difference of opinion the case should be disposed of by the Political Agent.

With regard to the trial of Government servants by State Courts, with very few exceptions, the jurisdiction is being exercised by State Courts (except with regard to Europeans and Foreigners as cited above). These servants mostly serve under the postal and Railway Departments.

In Bharatpur recently an employee (viz. a daftri) of the Political Agent's office was charged with the offence under section 436 I.P.C. committed in the State, and tried by the State Courts but the jurisdiction of the State Courts to try him for the said offence was not questioned by the Government of India.

In certain cases the copy of the judgment against a Government servant is sent to the Department concerned through the Political Agent.

In Rajgarh State, Criminal cases in which the persons accused are Europeans, European British subjects, Americans or Government servants cannot be disposed of by the Ruler.

The original provision (as stated above) was however, amended in 1934 when the State was empowered to try Indian servants of Government committing offences while they are on leave or

absent from duty in State territory or commit offences in State territories not connected with their official duties. In these cases all that is required is that the State authorities intimate to the Political Officer concerned their intention to try a Government servant at least a week before embarking on the actual trial. The above, however, does not apply to the cases of Government servants who being State subjects commit offences in the discharge of their official duties and the procedure which governs cases of this nature is that the State should, before proceeding with a trial, obtain the consent of the Political officer and intimate the result of such trial when finished

In Cochin State inherent jurisdiction was being exercised as a Sovereign State over European British subjects and Americans till 1871 without any discrimination when the Government of India raised protests against this exercise of jurisdiction by Cochin and Travancore. Under the Indian Foreign Jurisdiction Order-in-Council, 1902 (vide Notifications Nos 1441-I.B , 2441-I.B. and 2443-I.B. dated 18th October 1917, of the Government of India) the Governor-General-in-Council has appointed the British Resident as the Justice of the Peace in Cochin and has invested him with the powers of a Sessions Judge for trial of European British subjects and the appeal from his decision lies to the

High Court of Madras This is an extra-territorial jurisdiction assumed by the Paramount Power over European British subjects and Americans in the State of Cochin. This is a discrimation in the case of an Indian State.

A case of causing death by rash and negligent driving of a Military lorry by a European soldier was taken cognisance of in January 1941, by the Resident in his capacity as Justice of the Peace and tried by him. The alleged offence was committed within the territories of Cochin

Jurisdiction of the Courts of Indian States over offences committed by the members of the Crown Police Force in the territories of the States has also been questioned on the ground that under the Crown Representatives Police Force Law the members of the Police Force are liable to the Crown representatives jurisdiction for offences committed in the territories of any Indian States It was contended on behalf of the States that the courts of States concerned should exercise jurisdiction over members of the Crown Police Force with regard to offences committed within the State territories not connected with their official duties It appears that the State courts may try such personnel stationed in Indian States for offences committed in that State in the following cases:—

(i) offences commited in State territory while such persons are on leave or absent from duty;

(*ii*) offences committed by them which are not connected with their official duties;

(*iii*) petty offences, even when connected with their official duties, but only at the discretion of the Political Officer.

Whenever the States propose to exercise such jurisdiction the Political Officer concerned is expected to be informed about the prosecution and its result, who may also withdraw such cases if he finds it necessary to do so.

The position in respect of the trial of the personnel of Crown Police Force for offences committed within the territories of States should not be different from that in respect of the jurisdiction already exercised by individual States over offences committed by servants of the Crown within their territories.

EXTRADITION

THE law of Extradition is without doubt founded upon the broad principles that it is in the interest of civilised communities that crimes acknowledged to be such should not go unpunished and that it is part of the comity of nations that one State should afford to another every assistance towards bringing persons guilty of such crimes to justice. It is only just that hardened criminals should not be allowed to take advantage of the Political divisions of the country and the hands of justice should infallibly reach all corners of the country, irrespective of its geographical and political diversities. The extradition of criminals is also in the interest of the States into whose territory the criminals of other administrations take refuge in as much as from their past conduct it may reasonably be anticipated that they would again repeat their misdeeds in the territories where they take refuge.

The Extradition Act 1903 provides for the Extradition of criminals from British India to Indian States. Under this Act the Extradition Proceedings can begin in four different ways :—

(*a*) Under Section 7, where a warrant is issued by the Political Agent concerned to the District Magistrate in the British District.

(*b*) On a requisition from an Indian State under Section 9.

(*c*) Under Section 10, if a Magistrate believes a person within his jurisdiction to have committed an offence in any Indian State

(*d*) Under Section 54 (1) seventhly, of the Code of Criminal Procedure, when a person believed to have committed a crime outside British India, may be arrested by a British Police Officer without a warrant.

When a person is arrested under clause (*a*) the Magistrate has no option whatsoever but to comply with the warrant issued by the Political Agent. Under Clause (*b*) the Magistrate should make a regular judicial enquiry into the case and report the matter to the Government under section 3 of the Act. In cases governed by clause *c*), the Magistrate enjoys the discretion to issue process or not If he does so the Magistrate may not without the special sanction of the local Government detain the accused for more than two months unless within such period he receives a warrant from the Political Agent under section 7 or an order from the Government under section 9 Under clause (*d*) when the Police acts on its own initiative the Magistrate before whom the accused

is produced has the discretion of proceeding under section 23 or not; he may detain the accused as if he had been arrested under Section 10 or may release him.

The Indian Extradition Act 1903 has as such no application to the extradition of persons from Indian States to British India or from one Indian State to another. This procedure is governed by the treaties and engagements entered into between British India and the Indian States inter-se. Such treaties, either with British India or between the States themselves, have to be followed even if they over-ride the provisions of the Extradition Act, as provided in section 18 of the Act. But, with regard to extradition of criminals from British India, supplementary treaties have been made with almost all Rajputana States, which run as follows.

'Whereas a Treaty relating to the extradition of offenders was concluded between the British Government and the States; and whereas the procedure prescribed by the Treaty for the extradition of offenders from British India to the State has been found by experience to be less simple and effective than the procedure prescribed by the law as to the extradition of offenders in force in British India, it is hereby agreed between the British Government and the State that the provisions of the Treaty prescribing a procedure for the extradition of offenders shall no longer apply to cases of extradition

from British India to the State; but that the procedure prescribed by the law as to the extradition of offenders for the time being in force in British India shall be followed in every such case."

In order to facilitate the prevention and suppression of organised crime, it is obviously essential that extradition treaties and agreements should be enlarged and amplified in keeping with the requirements of modern times. The list of extraditable offences may also as far as possible be enlarged in order to be able to bring to book all offenders against public laws. In the case of Benares State Section 498 I. P. C. has been added to the list of extraditable offences (see Gazette of India 1920 part I page 590). They should be as far as possible on a uniform and systematic basis. The uniformity of the different treaties entered into by Indian States individually cannot be over-emphasised, and it will be really difficult to achieve any appreciable results in this matter unless we arrive at an agreed common draft to be used as a model for Extradition Agreements, at least between coterminous States, with necessary modifications to meet local conditions. With this end in view a Draft Extradition Agreement is appended herewith. (Appendix B.)

In the best specimens of Extradition Treaties between sovereign States, we find a clause to the effect that "neither Government shall be bound in

any case to surrender any person not being a subject of the Government making the requisition Such clauses also appear in the Extradition Treaties between the British Government and Nepal Government and Hyderabad State. The principle underlying such a clause is that no State should willingly concede to a province or another State more than what a province may under the existing law concede to it. Under this clause the surrender of a fugitive criminal is made optional but not compulsory. Under Section 15 of the Indian Extradition Act of 1903 the British Government has reserved the power of staying any extradition proceedings and directing the cancellation of any warrant issued under Chapter 3 of the Indian Extradition Act. A similiar provision conferring powers on a State to refuse to surrender its subjects in any particular case has not been generally included in extradition treaties between the States interse or between the States and the British Government. Such a clause, if included, should be intended to assert a State's claim to territorial sovereignty and its regard for the welfare of its subjects. It is, however, also apprehended that if such a clause is kept in the agreement between the States interse an unwilling State may take shelter under this clause and refuse to surrender the accused persons without reasonable grounds.

The Extradition agreements between Indian

States generally contain a provision to the effect that in cases of any dispute regarding any point connected with extradition a reference should be made to the Political Agent, whose decision shall be final. This provision of any reference to the Political Agent or Resident has been omitted in the appended Draft (Apendix B), as it does not appear to be wise for a State to bind itself to the decision of a Political Officer in purely interstatal matters, which can possibly be decided mutually. If the Political Department finds good grounds to intervene in a partticular case, it will do so inspite of the agreement.

Section 12 of the Indian Extradition Act provides that the provisions of the Act will apply to the case of a person who having been convicted of an offence in the territories of any State, has escaped into or is in British India before his sentence has expired. A similar clause has been added in the Draft Extradition Agreement, with this difference that the section of the Act applies to convicted persons only while the clause in the agreement is made applicable to every person, who is accused or convicted of an extraditable offence In the case of Jaipal Bhagat Vs. King Emperor (A. I R. 1922 Patna 442) it was held that Section 7 of the Indian Extradition Act 1903 applies only to extradition offences and that as absconding from jail was not

mentioned in the Schedule to the Act, the accused could not be extradited. The point was also considered in Exparte Moser (1915) 2 K. B, 69, where it was held that a person, who is convicted and sentenced to imprisonment for an extradition crime and who breaks out of prison and escapes before the expiration of his sentence is a fugitive criminal. The term "fugitive criminal" is defined in Section 10 of the Extradition Act 1870 as "Any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign State who is in or is suspected of being in some part of Her Majesty's dominions." It seems desirable that provision should be made in the Extradition Agreements in order to remove any ambiguity in this respect.

A clause has also been added to ensure that if a person accused of an extraditable offence is acquitted and appeal is filed against such an acquittal, the other State within whose territory the accused has meanwhile managed to escape, shall surrender him to the State in which the offence was tried without further extradition preceedings, on the certificate of the appellate court. In December 1930 the Prime Minister of Indore made a reference to the Secretary to the Hon'ble the Agent to the Governor General in Central India on this point. He detailed his arguments as follows.—

"In the Wylie Rules on the subject of extradi-

tion there is no provision to secure the extradition of an offender in a case where he is acquitted by one court and on an appeal being filed against the order of his acquittal by the Government, his surrender is required for purposes of an appeal before the High Court. Cases sometime occur in which it becomes necessary to obtain the extradition of an offender once acquitted in order that the appeal filed against him may be heard according to law and the improper order of acquittal may be set aside. In the absence of any provision on the subject in the Extradition Rules, it is open to any State to decline to surrender any such offender, with the result that the offender escapes punishment if the order of acquittal is subsequently found to be bad in law. With a view to solve this difficulty it is desirable that the point may be definitely settled either by a ruling of the Hon'ble the Agent to the Governor General in Central India after consulting, if necessary, the State concerned or by negotiations with the different States through the Agency."

In a similar case in Rampur State, the accused was acquitted by the Sessions Judge and on appeal on behalf of the State, the High Court issued warrants against him. The accused had escaped into British territory and on requisition on behalf of the State, the accused was resurrendered to Rampur State from the neighbouring British Indian District.

There is a clause in the "Reciprocal arrangements in Central India as regards extradition etc." dated 1st June 1933, to the effect that the arresting State may recover expenses for arrest or detention of an accused, if the demanding State does not make the requisition within the prescribed time or if the claim for extradition is relinquished There is no similar provision in the Indian Extradition Act or in the treaties between many States. It appears that such a provision may in certain circumstances lead to unnecessary correspondence and difference of opinion and consequently may embitter the relations of the neighbouring States, and that such a procedure is bound to give rise to questions on which there can always be ample scope for honest difference of opinion. As a matter of illustration, very recently a difference of opinion arose between two States in Central India, where it was argued by the arresting State that the primafacie evidence sent by the demanding State was so frivolous and unconvincing that the demanding State should be held to have relinquished its claim. thereby entitling the arresting State to the payment of charges under clause 39 of the Central India Rules. It was felt that the refusal of the prima facie evidence by the arresting State should not amount to relinquishment of the claim by the demanding State. Thus instead of giving an occasion for many unpleasant questions

about establishing or denying a claim for such expenditure, which is usually of negligible amount, it is best to depend upon the good sense of the Officers concerned, who are expected not to make frivolous demand for extradition, which may give legitimate ground for complaint by the arresting State. The arresting State will, of course, release the accused whenever the prima facie evidence held to be sufficient for the extradition of the accused is not received within the stipulated period. In case there is any specific instance in which it appears that the demand has been made without good ground, the best way is that the arresting State should bring that fact to the notice of the highest authority in the State concerned. Therefore it has not been found desirable to add such a clause in the Draft Agreement appended herewith.

As I have said above, the Indian Extradition Act 1903 has as such no application to the extradition of persons from Indian States to British India and to the extradition of persons between the Indian States interse. It is, therefore, also desirable to frame local rules for the guidance of State officials in matters relating to the extradition of offenders and property from Indian States to British India or between Indian States interse. A Draft of such local Extradition Rules is also appended herewith which could usefully be adopted by Indian States,

with such necessary modifications as local conditions in individual States may necessitate. The draft rules relating to Extradition and certain other interstatal matters prepared by the Princes Chamber may also be considered in this connection (see Appendix C).

In many cases, circumstances arise, where the neighbouring States hold different views about the sufficiency of the prima facie evidence to justify the surrender of the accused. In such cases the bonafides of the other party need not be questioned simply because they happen to hold a view different than ours; and the controversial points should be handled with a spirit of reasonable accomodation. In order to ensure smooth and successful handling of such matters it is very desirable to encourage harmonious relations with the neighbouring States by arranging periodical meetings of Extradition Officers which will, *more often than not*, obviate unnecessarily lengthy and fruitless correspondence.

RECIPROCITY IN THE EXECUTION OF DECREES

THE question of the reciprocity in the execution of Civil and revenue decrees with the British Indian Courts was discussed in a Standing Committee meeting of the Princes Chamber in February 1925, when it was resolved that the adoption of a general system of reciprocity in the execution of decrees between the British Government and Indian States does not appear to be feasible and that such reciprocity must be purely a matter of individual convenience and choice in regard to which individual negotiations should be resorted to The Committee were further of opinion that a previous reference on the subject to all the States which have already tentatively entered into such a reciprocal agreement would appear to be advisable, when it might also be ascertained as to how the arrangement has worked and whether it has been attended with any inconvenience to the State courts or hardships to their subjects.

It was felt that matters of dispute between the court passing the decree and the State courts would go to the British Indian High court at the instance

of the British Court or to the Government of India on the motion of the Indian States and that the reciprocity would consequently lead to difficulties and complications. Another objection raised was that under such an arrangement Indian States may be deprived of the revenue derived from the court fees, which under existing circumstances are levied on suits instituted on the basis of foreign decrees. The States further objected to the recognition by their courts of any judgment of a British court which violates any local law of the States. The States also contended that, in case of reciprocity, their courts should exercise the powers under section 13 of the C. P. C while executing decrees of British Indian Courts. Under section 44 C. P. C the decrees of any Civil or Revenue Court situated in Indian States, and notified to that effect by the Governor General, may be sent for execution to the British Indian Court as if they had been passed by the courts of British India, but the courts in British India are not authorised to send or transfer their decrees for execution to courts in Indian States. The policy of the Indian legislature has been to leave such decrees to be executed in the courts of Indian State pursuant to the legislative authority of such State. In a Full Bench case (Pierce Leslie Vs. Perumal I. L. R. 40 Madras) of the Madras High Court it was held that in the

absence of any provision to that effect in the Civil Procedure Code, courts in British India have no power to send their decrees for execution to the courts in Travancore, but should send to those courts the documents they require to enable them to execute the decree under the powers conferred upon them by the Legislative authority of the State. It was therefore felt that the existing practice regarding the reciprocity of decrees should be legalised by an amendment of Section 45 C. P. C so that there may be no difficulty in the execution of decrees in British India or in Indian States. But the British Legislature has no authority to legislate for the Indian States and consequently Section 45 could not be amended to affect the Indian State Courts not established under the authority of the Governor General in Council.

Soon after the judgment of the Madras High Court referred to above another equally interesting judgment was pronounced by the Bombay High court on this point (A.I.R. 1918 Bombay 236). I am therefore quoting this judgment at length. The Learned Judges have held therein that, "While Section 44 C. P. C. expressly provides for the execution of decrees of the courts in Indian States by our courts, there is no corresponding provision empowering our courts to send their decrees as of right for execution to the courts of an Indian State. I entirely neglect

Section 45 which really has no bearing on the point under consideration. Now what is the reason for this? A very plain reason indeed. If we were to examine the Civil Procedure Code of any Native State, with whom reciprocity in this respect has been established, we should be pretty sure to find a provision there of the same kind as Section 44 of our Code. We have no power to legislate for Native States, and feeling is so sensitive on these points that it is easily intelligible that our legislature would have refrained from inserting any provision in our Statute which might have had the appearance of asserting a right over the courts of a Native State. The interchangeable use of Civil machinery between British and Native State courts is a matter of comity. But once arranged and understood, surely where the condition exists, our courts are intended to make use of it. Else what would be the sense of the Government of India negotiating with Native States and issuing notifications on the subject? It is conceded, for the argument before us, that some time prior to the application, a political agreement had been reached under which the courts of the Sangli State were to execute our decrees, and we were to execute theirs. But if no British court could, intra vires, send any of its decrees for execution to a court of the Sangli State this agreement would be entirely unilateral and, for

any advantage the British courts were to have of it, might as well not have been made

When, then, as the result of agreement between the British Government and the Government of any native State we *find*, as we do in this case, that our courts are informed that the courts of the Sangli State will execute our decrees, and our courts are directed to execute the decrees of the courts of the Sangli State, can it be seriously contended that an application by a decree holder, whose debtor has little or no property outside the jurisdiction of the Sangli courts, to one of our courts, to send its decree to the Sangli Court for execution, is not in accordance with law.

To avoid so formal and tedious a procedure, in the special circumstances, understandings have come to my notice by which, for purposes of execution, our courts accept and execute the decrees of the foreign courts, at their very doors, and they in turn accept and execute ours. Such are the actual facts. Is there anything in them which makes the procedure, thus sanctioned and followed in hundreds of cases "illegal" in the sense of being "not in accordance with law"? When in this way hundreds of our decrees are in fact executed by foreign courts on transference, can it be said that transferring them for execution under agreement, is not a step in aid of execution, or that there is anything

more than a distinction without a difference in altering the terminology and saying that in all these cases our courts do not transfer their decrees for execution but merely send all necessary papers for realisation of the decreed property? That is the real point. Now this again must be borne in mind that when our statute empowers one of our own courts to transfer its decree for execution to another of our own courts, the latter is bound to accept and execute it precisely as the transferring court would have done had the property been within its control. The same duty is imposed, the same modes are prescribed, the execution must be subject to exactly the same restrictions. But how can any such terms be imposed upon a foreign court? Is not here a sufficient reason for the omission upon which the conclusion of the Punjab Chief Court, and the Madras High Court rests? If it be once conceded that, owing to special local conditions the common rules of international law are relaxed by diplomatic arrangement in many parts of India, we come in sight at once of a satisfactory ground upon which to distinguish execution proceeding against property in, and property outside the jurisdiction. By what are commonly called Political, but are really rather in the nature of diplomatic arrangements, the latter property can be made available for the satisfaction of the decrees of our courts directly and without the

need of filing a fresh suit in the foreign court by the simple expedient of sending the British court's decree to the foreign court for execution. It is true that our statute can contain (logically) no provision for this mode of execution corresponding precisely with section 39, for the reason already given. But is that any reason for saying that this is not a mode of execution, essentially in accordance with law, and certainly most effective in the direction of working out vicariously the execution of the decree .....?

It is true, that as soon as that aid has been invoked, our statute cannot regulate the mode in which the foreign court will proceed to execute. That mode may differ in minor points from the mode prescribed by our statute but it may be confidently anticipated, in minor points only. Before reciprocal agreements of this kind are made, a substantial agreement in procedure will have been proved, that is to say, no such agreements would be made by our Government with foreign courts whose methods of execution were purely arbitrary, barbarous and inhuman."

It is undoubtedly true that the courts in Indian States are not in any way subordinate or bound by the Law or Procedure of British India while executing decrees of British Indian Courts. This view has also been accepted in the judgment of the Bombay High Court quoted above.

As regards the exercise of powers under Section 13 of the C. P. C. by British Indian or Indian State Courts executing the decrees of foreign courts, there can be no doubt that Section 44 C. P. C does not override Section 13 C. P. C. An application U/S 44 C. P. C. for the execution of a decree of a foreign court may be resisted on any of the grounds mentioned in Section 13 C. P. C. Section 44 only confers authority to execute a decree which is in every other way a valid and enforceable decree (See A I R. 1931. Allahabad 689 and A. I. R 1915 Madras 486 Full Bench).

Thus acting on the same principle, the courts in Indian States while executing decree of British Indian Courts are entitled to refuse execution of decrees on any of the grounds mentioned in Section 13 C. P. C.

While the question of reciprocity in the execution of a decree is one which the Governments of different States or in British India should decide individually, it appears desirable that in the interest of uniformity in the dispensation of Civil justice, unaffected by geographical and political divisions of the country, agreements may be reached between Indian States inter-se and with British India for reciprocal execution of Civil or Revenue decrees which will obviate the necessity of filing fresh suits in foreign courts. Defaulting debtors

who generally abscond from one territory to another simply to defeat the just claims of the creditors can then be made to satisfy the debts against them without forcing the creditors to resort to the lengthy and duplicate procedure of filing fresh suits in the territory where the defendant is found

The Governor General in Council has declared by notification in the Gazette of India (Nos. 321 1 (F. P) dated 15th May 1929) that the decrees of the courts of the following States (mentioned in Appendix 10 volume 2 of the Rules for Civil courts under the Allahabad High court) may be executed in British India as if they had been passed by the courts in British India. These States have also agreed that the decrees passed by Civil Courts in British India may be sent for execution by the courts in their territories Baroda, Benares, Rajpipla, Chhota, Udaipur, Baria, Sachin, Kolhapur, Sangli, Miraj, (Senior), Miraj (Junior), Ramdrug, Kurundwad (Junior), Savantvade, Savanpur, Janjira, Akalkot, Cooch, Bihar, Kashmir, Cochin, Pudukotah, Travancore, Mysore, Sikkim, Manipur.

With respect to the execution in Native States of decrees obtained from British tribunals, the following instructions have been embodied by the Government of India in resolution No. 240, dated 27th August, 1868 :—

Holders of decrees obtained in British tribunals

must present them themselves, or by their lawfully constituted agents for execution before the regular tribunals of Native States, where such tribunals exist without in any way invoking the aid or relying on the influence of the British representative. The question of reciprocity in the execution of decrees is one which the tribunals of the respective Governments must decide.

Where there are no regular tribunals the Political representatives will, as a general rule, abstain from putting any pressure on, or using his influence with, the chief or the Darbar in order to enforce the execution of a decree obtained in British territory :

Nor this determination ought to inflict any real hardship on claimants who successfully have resorted to our courts for redress. In many cases where large sums of money are claimed from debtors resident in British territory, such persons, if they abscond into Native States, have either property or partners behind them in the said British territory against whom execution may at once be taken out; and in all cases where plaintiffs apprehend that a defaulting debtor may abscond or may convey away his property, the provisions of the Code of Civil procedure regarding the attachment of property while a suit is pending afford to all litigants who are properly alive to their rights and positions during litigation, a fair and adequate security against even-

tual loss by evasion or default. There may occur, however, some flagrant cases in which a defaulting and absconding debtor possesses large means within the limits of Native territories in which the default and evasion may be marked by acts of gross fraud and flagrant dishonesty and in which, by deceit or artifice, he may have reduced the honest creditor to ruin, or have left him without the slightest prospect of redress and there may be other peculiar circumstances which, in the judgment of the Political Officer, might render interposition on his part expedient

In such cases the representative of the British may, when applied to, most properly use his discretion in pointing out to the Chief and the Darbar the special circumstances which render intervention desirable, and may urge them to compel the defaulter to discharge his liabilities. In cases of remarkable difficulty or doubt the political authority may, if he thinks fit, refer the matter to Government for orders before taking any action.

But it must be clearly understood that these cases will form the exception and not the rule, and that the political authority will only adopt this course when he is fully satisfied that the case is distinguished by exceptional circumstances, and that the claimant has been the victim of fraud and trickery and has practically no other means of

obtaining his rights.

In such marked cases the moral influence and advice of the British Official may be properly exerted and the Darbar will doubtless recognize the propriety of insisting that the evading debtor shall come to some satisfactory arrangement with his creditors.

SUCCESSION CERTIFICATES.

SECTION 382 of the Indian Succession Act 1925 provides that, "where a certificate in the form as nearly as circumstances admit, of schedule 8th has been granted to a resident within a foreign State by the British representative accredited to the state or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the court Fee Act, 1870, with respect to certificate under this part have the same effect in British India as a certificate granted or extended under this part.

This Section is somewhat analogous to English Law which has been formulated as Rule 135 in Dicey's Conflict of Laws (Fifth Edition) to the following effect :—

> "Whenever the Colonial probates Act, 1892, is by an order-in Council made applicable to any British possession, that is, to any part of the British Dominions not forming part of the United Kingdom, Protectorate, Protected State, or Mandated territory, the grant of

> Probate or letters of administration may, on (1) payment of proper duty, and (2) production of the said grant to, and deposition of a copy thereof with, the High Court in England, be sealed with the seal of the said Court, and shall thereupon be of the like force and effect and have the same operation in England, as an English grant."

In Mana Singh Versus Amadh Kunee (17 M 14) the Madras High Court held that the plaintiffs were not entitled to decree without taking a certificate under the Succession Certificate Act from the Political Agent accredited to the Cutch State. The plaintiffs who were the Natives of Cutch had produced the probate issued from the Cutch Court a copy of which was only certified by the Political Agent of Cutch.

Thus when an Indian State subject dies leaving property in British India, his successor has to obtain succession certificate from the British representative accredited to the State U/S 382 of the Indian Succession Act, and the certificate issued by the Indian State court under whose jurisdiction the deceased ordinarily resided is not recognised in British India.

The succession Certificates are solely for the purposes of establishing the representative character of the applicant ; and to determine, who are the next-

of-kin or heirs to the personnel estate of the deceased, is the prerogative of the judge of the domicile only (Goodman's Trusts, 17 C. H. D. 266; Andros Vs. Andros 24 C. H. D. 637). In Enohin Vs. Wylie 10 H. L. C. 13, it has been held that the court of domicile is the forum concursus, to which the legatees under the will of the Testator, or the parties entitled to distribution of the estate of an intestate, are required to resort. However, it has been argued that though it is the recognised prerogative of the Judge of the Domicile to determine the representative title to the deceased's property, such title does not extend, dejure, beyond the territory of the Government which grants it, and in that case a fresh certificate of succession may be obtained in the country where the property in question actually lies. It is also said that payment of British Indian Court fees is incidental to a fresh grant and constitutes an unavoidable legal obligation which is in accord with the principles of English Law. But, once the principle that the Judge of the domicile should determine the representative title to the deceased's property, is conceded, there should be no difficulty for accepting such adjudication as binding for the courts under whose jurisdiction the property in question actually lies, and arrangement can be made between the States inter-se and with the British Government for the reciprocal recognition of Succession certificates issued

by the Courts in British India or in Indian States.

There are many authoratative decisions both in England and in India to support this view. In Re : Trufort, Trafford Vs. Blanc, 36 C. H. D. 600, the rule has been stated to be that although the parties claiming to be entitled to the estate of a deceased person may not be bound to resort to the tribunal of the country in which the deceased was domiciled, and although the courts of this country may be called upon to administer the estate of a deceased person domiciled abroad, and in such case may be bound to ascertain as best they can, who, according to the law of the domicile, are entitled to that estate, yet, where the title has been adjudicated upon by the courts of the domicile, such adjudication is binding upon and must be followed by the courts of the country." Other authorities for the principles that in all cases the lex domicilii, or the law of the testator's or intestate's domicile at the time of his death, should determine the right of succession, are Potter Versus Brown 5 East 130; Price Vs. Dewhurst ; 4 My and Cr. 76. In A. I. R. 1926 Calcutta 898, which relates to insolvency proceedings, the view of the international law as accepted by English and British Indian Courts with regard to moveable property in foreign country has been held to be 'mobilia sequentur personam' that is, prima facie such moveables are governed by the domicile of

the insolvent. Other authorities on this point are Phillip Vs. Hunter R R 146, Sill Vs. Warswick 1791-1 H B I 665 and Cocckerell Versus Dickens 1840-3 Moo P. C 1890.

The practice of Political Agents counter-signing succession certificates granted by State Courts, even though they may be stamped with the requisite British Indian Court fees on being thus counter-signed, does not strictly comply with the legal requirements. Countersignature of a certificate by a Political Agent may mean no more than attestation for purposes of Section 86 of the Indian Evidence Act, and would not turn the certificate issued by a State court into a certificate granted by the Political Agent himself, which is the specific requirement of Section 382 of the Indian Succession Act.

In view of these authorities it appears just and reasonable that in cases of deceased persons, who were subjects of Indian States at the time of their death, the State Courts alone should be entitled to adjudicate upon the representative character of the person claiming to be the rightful successor of the deceased. In such cases the fees payable under the Court Fees Act for the issue of succession certificates should also be chargeable by the State.

Therefore, it seems desirable that arrangements may be made between the States inter-se and with the British Government for the reciprocal recognition

of the Succession Certificates issued by the courts in British India and the courts in Indian States with respect to the subjects of their respective territories and it should not be necessary to secure the certificate from the British representative accredited to the State in cases where the deceased person ordinarily resided within the jurisdiction of Indian States.

It may also be possible that the States may make arrangements with companies operating within their territories to make payments due to State subjects within the territories of the States concerned on the production of a Succession certificate from a State Court, in which case the State subjects will not be required to obtain fresh succession certificates from British Indian authorities.

DISPOSAL OF UNCLAIMED AND OTHER PROPERTIES OF DECEASED PERSONS

SECTION 174 of the Government of India Act 1935 provides that all property in India accruing to His Majesty by escheat or lapse, or as bona vacantia for want of a rightful heir shall vest in His Majesty for the purposes of the Government of the Provinces or of the Federation as the case may be

It was suggested on behalf of the Indian States that property in a State of which there is no rightful owner should under the laws of the State accrue to the Ruler by escheat or lapse, or as bona vacantia. His Excellency the Crown Representative ruled with regard to the disposal of unclaimed deposits in the Savings Banks of the Imperial Post Offices in Indian States, and also of investments in Government Securities belonging to State subjects who die intestate and heirless, as follows :—

A deposit in a Post Office Savings bank by a person who dies intestate and heirless, becomes bona vacantia and the title thereto is governed by the law of the place where the property is situate, and not by the law of the place where the deceased was domiciled. A deposit in a British Post Office Savings bank

situate in an Indian State is property 'situate' in a State, and the title thereto in the event of the depositor having died intestate and heirless, according to the Law of his domicile, will be determined according to the Law of the State ; and if by the Law of the State where the property is situate such property passes to the ruler as bona vacantia, it will so pass, but the onus of proving that the depositor died intestate and left no heirs will be on the State claiming the property as bona vacantia.

Similarly Government securities held by a person dying intestate in a State in India to whose property no one is entitled to succeed pass as bona vacantia to the State or to the British Indian Government according as they are 'situate' in the State or British India.

It was further decided that all Government securities, whether issued by the Central Government or by a Provincial Government and whether issued in the form of Promissory notes or stock and all securities issued by Statutory Corporations in whatever form issued are to be deemed to be 'situate' where the bond or scrip evidencing the debt is found.

With regard to deposits in Post Office Savings Banks belonging to a person dying without heir or successor, the unclaimed deposits will pass to the State if the Post Office where the deposits of the deceased were kept was situate in an Indian State.

But if the subject of an Indian State has deposits in British Indian Post Office Savings Bank and he dies intestate or heirless no matter where, the deposits would go to British India, in spite of the fact that the man was the subject of an Indian State It also means vice versa, but the chances of deposits of a British Indian Subject, being situated in an Indian State and having deposits in the Postal Savings Bank in an Indian State are relatively smaller.

The question of Government security is much more important, because there can be no reciprocity in the matter of Government security, as few Indian States have got their own securities out. The position is undoubtedly hard, because, if a subject of an Indian State holds Government security in certain forms, notwithstanding the fact that, he having died intestate and heirless, and his other property passes on to the State, this particular asset would pass on to the Provincial Government in British India, where the stock was inscribed. When it is in the form of Promissory Notes or Bearer Bonds, it would be held to be situated where these were actually found and, if they were situated in a State they would pass on to the State. If, however, the deceased had kept the securities with a Bank in British India for safe custody only they would be regarded as situated in British India and therefore

would pass on to the British Government. All Stocks would be regarded as situated in the place where they were payable.

In order to get a clear discharge for the amount to be paid to the State in the case of escheat, from an Imperial Post Office, it has to be shown that by the law of the State, the State becomes entitled to the money by escheat. It must be realised that the Post Office must get a valid discharge upon payment or must be indemnified against future claims. A form appended (appendix D) herewith has been drawn up for completion by the State at the time of such claim. The form shows that the counter-signature of the Political Agent is required for the purpose of authentication only. It is felt that as a uniform practice, counter-signatures of the Political Officer may not be necessary in cases where a State is entitled by escheat to the assets of persons dying intestate and without a lawful heir, in the Imperial Post Offices in the States.

As regards the settlements of claim of heirs of deceased persons in Indian States in respect of their Postal Savings Banks deposits, Cash Certificates and Government securities the following ruling has been given : No British Indian Court Fee Stamp is required for the grant of property situated within the State. The counter-signature of the Resident is necessary to authenticate the legal representation

granted by a State court. If the Posts and Telegraphs Department is protected against the risk involved in dispensing with that counter-signature, it is prepared to waive this requirement in respect of Savings Banks Deposits and Defence Savings Cash Certificates payable at an Imperial Post Office in the State. In respect of Government securities, however, an unauthenticated grant from an Indian State cannot be recognised, because the Central Government are legally liable to repay the principal of their terminable loans only at the General Treasury at Fort William (the office of the Reserve Bank of India at Calcutta).

The Director General, Posts and Telegraphs, is of the opinion that one way of protecting the Indian Posts and Telegraphs Department against the risk involved in dispensing with the counter-signature of the Resident, which under the present procedure is necessary for the authentication of the legal representation granted by a State Court, would be for the Chief Officer of the State concerned to certify that the grant was genuine and to affix the State seal to the Certificate. The Director General, Posts and Telegraphs has, also suggested that this procedure should be in the alternative to the present one, which may be allowed to continue, it being left to the recipient of the grant to adopt whichever of the two procedures he finds the more convenient.

INSOLVENCY

THE jurisdiction of the insolvency Courts in British India to make an order adjudging a person an insolvent is conferred by the two Acts of the Indian Legislature, namely, the Presidency Town Insolvency Act 1909 and the Provincial Insolvency Act 1920. These Acts, however, have no operation in Indian States or against Indian States' subjects as all legislation is prima facie territorial, that is to say, that the legislation of any country binds its own subjects and the subjects of other countries, who for the time being bring themselves within the allegiance of the legislating power. Upon an order of adjudication made by a British Indian Court, the whole of the property of the insolvent vests in this court or in a receiver and no creditor to whom the insolvent is indebted is allowed during the pendency of the insolvency proceedings to have any remedy against the property of the insolvent or to have any remedy against the property of the insolvent or to commence any suit or other legal proceeding except with the leave of the court. Such an order can not, however, operate outside British India unless specially recognised by the law of the State in which it

is sought to be enforced. Thus, where an insolvent possesses properties some situated in British India and some situated outside it, and there has been a petition for adjudication in British India followed by proceedings in Insolvency outside British India, and a foreign court takes possession of the foreign property and employes it in paying the foreign creditors a dividend, such creditors can not afterwards prove their claims under the adjudication in British India except on the condition of first accounting for what they have received in the foreign bankruptcy (See A. I. R. 1926 Calcutta 898). In a Bombay case (A. I. R. 1921 Bombay 128) the debtor was adjudged insolvent in Bombay and he obtained a discharge from the Bombay Court. After his discharge, one of his creditors, who had obtained a decree against the insolvent in the court of the Sirohi State threatened to execute the decree by attaching the insolvent property in that State. The insolvent applied to the Bombay Court for an injunction restraining the decree-holder from executing the decree. The State had refused to recognise the official assignee. It was held that if the insolvent had property in that State, there was no reason why the decree-holder should not be allowed to attach it and the application was refused.

As regards the jurisdiction of court in British India to restrain a party from prosecuting a suit in a foreign court, Chief Justice Macleon has observed in the

aforesaid Bombay case that, "A court has jurisdiction to restrain a party within the jurisdiction, from prosecuting a suit in a foreign court if it thinks that the action of the party in filing the suit in the foreign court is opposed to notions of equity of the court seeking to restrain him. It cannot actually prevent the party from continuing his action in the foreign court, but if he came within the jurisdiction of the court, proceedings might be taken against him for contempt." This matter has also been discussed in Venechand Versus Lakshmi Chand, Manik Chand (1920-44 Bombay 272) where Mr. Justice Path has observed that there is no doubt as to the jurisdiction of this court to restrain a party, within its jurisdiction from prosecuting a suit in a foreign court. The principles on which this jurisdiction is exercised is set forth in the judgment of Lord Cramworth in the case of Carron Iron Company Versus Macleon (1855-5 H. L. C. 416) that " The court acts in personam and will not suffer any one within its reach to do what is contrary to its notions of equity merely because the act to be done may be in point of locality beyond its jurisdiction."

Again in A. I. R. 1932 Calcutta 124 it has been observed that there is nothing in principle which prevents the court from restraining proceedings in a foreign court when the parties sought to be restrained carry on business within the jurisdiction and have assets which can be attached in the case of any breach of

the injunction. But in the same judgment it has been admitted that the plaintiffs, who were domiciled in Bikaner State and were subjects of His Highness the Maharaja of Bikaner cannot be restrained from seeking the aid of the courts of their own State for recovering their dues from property belonging to the debtors in the Bikaner State, which has never been the subject-matter of the insolvency proceedings. This property was never vested in the official Assignee appointed by the British Indin Courts. Thus the property of the debtor in Bikaner State was held to be answerable to any decree which may be obtained by the creditors in the Bikaner Courts.

On the other hand, Penal Veraus Roy (3 De. G. M. &. G. 126) and Re, Chapman (21 W. R. 104) are the decisions which do not recognise any right to restrain proceedings in foreign courts. In the former case the court refused to restrain a creditor from proceedings against the real estate in Scotland of an English bankrupt for a sum of money equal to the dividend payable on the debt. In the latter case the Chief Judge in Bankruptcy, after a receiver had been appointed, refused to restrain creditors in NewYork, who had instituted suits there against the debtor. It appears that in refusing the injunction the court attached considerable weight to the fact that it would be ineffectual. In A. I. R. 1927 Sind 160 it has been held that, "It is a fundamental principle of international jurisprudence

that a sovereign of a country acting through the courts thereof has no jurisdiction over any matters with regard to which he cannot give effective judgment or which he can render effective only by interfering with the authority of a foreign sovereign or the jurisdiction of a foreign court." An effective judgment has been defined to mean a decree which the sovereign on whose authority it is delivered, has in fact the power to enforce against the person bound by it (Dicey on Conflict of Laws III Edition page 42). Again in A.I.R. 1926 Calcutta 898, it has been observed that the view of international law as taken by English and British Indian courts with regard to immoveable property in a foreign country is that our statutes do not operate unless indeed it is shown that the foreign law will give them effect. It has further been held in this case that as regards moveables in a foreign country, the basic principle is that prima facie such moveables are governed by the insolvent's domicile.

Under such circumstances, it does not appear reasonable to pass orders with regard to matters pending for decision in foreign courts, which could best be disposed of in the court having legal and territorial jurisdiction. Such orders if passed will of course not be given effect to by the foreign courts and will be discarded as an absolute nullity on account of their having been passed without any jurisdiction. As for the initiation of contempt proceedings by the

courts whose orders relating to matters beyond their jurisdiction have not been complied with, I think, that it would violate against the elementary principles of international law, which provide that, "An authority who legislates or administers justice beyond his own realm may be safely disobeyed beyond his jurisdiction."

Thus, persons who are adjudged as insolvents by the British Indian courts are not recognised as such beyond British India and I have quoted above some instances where foreign courts such as courts in Indian States have not recognised a person as an insolvent, who has been so adjudged in British India and has allowed creditors to proceed against the property of such a person situated within their jurisdiction.

It would, however, be contrary to all ideas of equity that a party trading and incurring debts in British India and having property in foreign territory which the official assignee could not get hold of, should be able to completely get rid of all his liabilities as regards his creditors in British India and then proceed to enjoy his property outside British India, free from all those liabilities. Section 77 of the Provincial Insolvency Act 1920 provides that all courts having jurisdiction in insolvency shall severally act in aid of and be auxiliary to each other in all matters of insolvency and a request of a court seeking aid from another courts shall be deemed sufficient to enable the latter courts

to exercise such jurisdiction as either of such courts could exercise in regard to similar matter within their respective jurisdictions. This section was enacted to enable one court to assist another in dealing with matters which were within the jurisdiction of the court asked to act. Similarily, as the courts in British India, cannot pass orders with respect to the insolvents's porperty outside British India and the courts in Indian States cannot vest any property situated in British India with the official assignee appointed by the State courts, it appears desirable that pursuant to the spirit of Section 77 of the Provincial Insolvency Act, reciprocal arrangements may be made and necessary legislation enacted in order to enable the courts in British India, as in Indian States, to mutually respect and recognise the orders from British Indian Courts or Indian States courts, as the case may be, and generally act in aid of and be auxiliary to each other in all matters of insolvency.

CERTIFICATION OF DOCUMENTS UNDER SECTION 79 OF INDIAN EVIDENCE ACT.

UNDER Section 78 (6) Evidence Act, public documents in a foreign country or in an Indian State may be proved by the original or by a copy certified by the legal keeper thereof with a certificate of the 'Diplomatic Agent' which word has been held to be very wide and to include the Residents or Political Agents in Indian States (99 I. C. 307). Section 86 lays down that the court may presume the genuineness and accuracy of any document purporting to be a certified copy of any judicial record of any foreign State, if the document has been certified in a manner which is certified by the Representative of the Government of India to be according to the usual rules and procedure of that country.

Thus the documents or their certified copies in Indian States have to be certified by the Political Officers of the Government of India before they could be admitted in British Indian Courts. It was felt that the copies of judicial documents duly granted by State courts may be held admissible in British India without their being countersigned by the Political Officers as

required under Sections 78 (6) and 86 of the Indian Evidence Act. The Political Department of the Government of India was addressed on the subject on behalf of the Chamber of Princes. Thereupon, the Political Secretary to the Crown Representative vide his D O. letter dated 23. 3. 1938 No. F/97 I. B./38 invited attention to Section 79 of the Indian Evidence Act and expressed the view that authorization thereunder which had already been granted in suitable cases would meet the object in view. The Standing Committee of Ministers, to whom this question was referred, thought that in the circumstances the point of view of the States having efficient judicial administrations was clearly met. They, therefore, felt that no further action was called for in the matter.

Section 79 of the Indian Evidence Act provides that the courts shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any Officer in any native State in alliance with Her Majesty, who is duly authorised thereto by the Governor-General in Council, to be genuine. In pursuance of this section notifications have been issued by the Crown Representative to authorise the officers of various States to certify documents for the purposes of Section 79 Evidence Act.

But I am afraid this authorization does not take

us very far until the certified document by the State Officers are held admissible in evidence in the British Indian Courts without the counter-signatures of the Political Officers accredited to the States.

Section 79 applies only to certificates, certified copies, or other documents certified by duly authorised officers in Indian States. Apart from being thus certified, the documents must be such as are under the provisions of the Evidence Act declared to be admissible as evidence. Section 86 lays down that the court may presume the genuineness and accuracy of any document purporting to be a certified copy of any judicial record of any foreign country including the Indian States, if such copy is duly certified in the manner and according to the rules in use in that country for the certification of the copies of Judicial records Section 86 also contemplates that there must be an additional certificate by a Representative of His Majesty or of the Government of India for that country or State, to the effect that the copy has been certified in conformity with the rules in force in that country or State. When a certified copy of a foreign judicial record thus certified by a Representative of the Government of India is produced, the court may presume it to be genuine and accurate. In A. I. R 1924 Lahore 493, it has been held that in the absence of the certificate referred to above, the statement of witnesses taken in a court in Jaipur State, are not admissible in evidence even

though they were forwarded by the Resident. Similarly in A. I. R. 1926 Patna 29, documents belonging to Hyderabad State were held to be inadmissible in evidence U/S. 78 Clause 1(6) of the Indian Evidence Act.

Thus it appears that notwithstanding the authorization granted to officers of Indian State U/S. 79, the provisions of section 78(6) and Section 86 may be held to be mandatory by the British Indian High Courts under which the documents with or without the countersignatures of the Political Officers of the Government of India may be held inadmissible.

Under the circumstances, it appears that the position is not yet free from difficulty and that further elucidation can usefully be made to ensure that a certificate issued by duly authorised officers of Indian States U/S. 79 will be deemed sufficient for the admissiblity of such documents in British Indian Courts, for which, sections 86 and 78 (6) may have to be suitably amended. A list of Indian States where officers have been authorised to certify documents U/S. 79 of the Indian Evidence Act is appended (Appendix E).

EXECUTION OF COMMISSION

UNDER the Civil Procedure Code, Order 26 Rule 5 provides that a commission may be issued for the examination of a person residing at any place not within British India. The evidence of a foreign witness taken in foreign territory under a commission issued under Order 26 Rule 5 and executed in accordance with the provisions in the Civil Procedure Code has been held to be quite in order (50 Calcutta 934)

Under the Criminal Procedure Code, Section 503 (2) lays down that in cases where the witness resides in the territories of any Prince or Chief in India in which there is an officer representing the British Indian Government, the commission may be issued to such officer. In the last sub-section of the same section, it is further provided that where the commission is issued to such officer as is mentioned in sub-section (2), he may delegate his powers and duties under the condition to any officer subordinate to him, whose powers are not less than those of the Magistrate of the first class in British India. Thus the powers to execute the commission can not be delegated to a Magistrate subordinate to a Ruler in an Indian State. But the reason for the absence of any such provision is apparent. The

Legislature in British India had no jurisdiction to provide for the execution of commission by Judicial officers in Indian States without the previous consent of the Rulers of Indian States.

This is bound to entail lot of practical difficulties or inconveniences in the speedy disposal of criminal cases. In a case reported in A.I.R. 1929 Lahore 104, the evidence of some witnesses residing in Bhawalpur State was asked for through the Agent to the Governor-General, Punjab States. The Secretary to the Agent informed the District Magistrate of Multan that the Agent to the Governor-General has no power to compel the attendance of the subject of an Indian State before him and that he is unable, therefore, to record the evidence on commission. The Learned Judge of the Lahore High Court (Justice Jai Lal) has, in the end of the judgment in this case, remarked—"I must now advert to a question of great importance relating to the trial of Criminal cases that arise out of this case. I have already indicated that the delay in the disposal of this appeal was due to the inability of the Agent to the Governor-General, Punjab States, to execute the commission for the examination of the defence witnesses issued to him and that it was only through the good offices of the Punjab Government that the Agent consented to secure the attendance of the witnesses before the Magistrate, otherwise, as the District Magistrate has remarked in the correspondence the matters had reached an impasse. The question

must, however, be solved whether S. 503, Cr. P.C. has any practical utility with regard to witnesses residing in the territories of any Prince or Chief in India specially in the Punjab. If the view of the Agent is correct that he has no power to compel the attendance before him of witnesses residing in an Indian State, then it is a matter of serious consideration for the courts in this province whether they should hereafter issue any commission for the examination of such witnesses to that officer at all and in that case the futility of the statutory provision contained in Sub-Section (2), S.503, Cr. P. C. is apparent. It is manifestly unfair to retain a provision in an enactment which has no practical utility or which the courts concerned are incapable of enforcing or would consider it unfair to enforce. Then there may be cases in which it may not be desirable or feasible to send a commisson to a Magistrate who is subordinate to a Prince or Chief in India ; in such cases, if the view of the Agent is correct, it will not be possible to examine any witnesses who are resident within the territory of such Prince or Chief unless they appear voluntarily in the British Indian Courts. The practical effect of this state of affairs will be that the courts must refuse to issue processes, whether at the instance of the Crown or at the instance of the accused, for the attendance or examination of witnesses which they are unable to enforce, with the result that a fair trial of several criminal cases will be

seriously hampered.

It is, however, inconceivable to me that the Government introduced a provision in the Criminal Procedure Code which has no legal sanction or to carry out which they have made no adequate arrangements. If it is a fact that the officer representing the British Government in the territory of a Prince or Chief has no power to compel the attendance before him of witnesses residing in such territory, then in my opinion the Government must consider the question of either securing such powers or of repealing the law which authorizes criminal courts to issue commissions to such officers as it is unfair to all concerned that such Courts should be expected to pass orders which they cannot enforce."

I think that this difficulty has been in many cases solved by the adoption of the Indian Extradition Act 1903 as the basis of Extradition arrangements between Indian States and British India on a reciprocal basis. Section 21 of the Indian Extradition Act 1903 provides that the commissions issued by Criminal Courts outside British India may be executed in British India in like manner as it may be executed in any civil matter under the provisions of the Code of Civil Procedure for the time being in force with respect to commissions (Order 26 Rule 5). This is, of course, a provision for the court situated in British India to execute commissions issued by the courts in Indian States. But as a matter

of reciprocity, Indian States courts may also execute commissions issued by Criminal courts in British India

It is gratifying to note that under the recent amendment of the Criminal Procedure Code in 1943, the substituted Sub-Section of section (4) 503 Cr. P. C. now authorises the Political Officer to forward a commission for the examination of a witness to a State court within whose jurisdiction the witness resides, if that court has been recognised by the crown representative as one competent for the purposes of Section 503 to execute such commission.

RECIPROCITY IN SERVICE OF SUMMONS OF CIVIL COURTS

THE Governor-General in Council has, by notification No. 323 (I) dated 15th May 1929, been pleased to declare that the provisions of Section 29 of the Code of Civil Porcedure shall apply to the courts specified in Appendix VIII in volume 11 of General Rules for Civil Courts under the Allahabad High Court and that service by the said courts of any summons issued by a court in British India shall be deemed to be valid service as required by Order 5 Rule 26 of the C P.C. The States mentioned in Appendix VIII (B) of the aforesaid volume have agreed to serve summons issued by courts in British India and to send their summons to courts in British India for service.

It is desirable that similar agreements to serve the summons issued by the courts of other Indian States may also be made between Indian States inter-se. In many States, such an arrangment is already in force and has been found to be convenient and useful for expeditious dispensation of justice. As regards the effect of non-compliance of the summons received from Brltish Indian Districts or

other Indian States, it has been remarked in A.I.R. 1933, Madras 336, "I am not aware of any law by which witnesses in Native States, which have made arrangements for mutual service of processes with British India, can be compelled to obey these processes i e. punished if they fail to do so. The arrangement for mutual service of processes is made in pursuance of Section 29 and Order 5 Rule 26 C. P. C. Though such processes may be served as if they had been issued by territorial courts, the effect of non-compliance is a different matter If, therefore, the Trivandrum witnesses refuse to attend on service of summons, the only way to take their evidence, if necessary was by commission." But it may be argued, that once it is accepted that the summons issued by a foreign court may be served by a local court as if they had been issued by such local courts, it should not be beyond the competence of local courts to take such action against the non-compliance of the summons, as they would have taken if the summons had been issued and served by the local courts. In the absence of such an understanding the non-compliance of the summons may not be punishable and the reciprocity in the service of summons may not be of much practical use

SUMMONS OF CRIMINAL COURTS

THE question of the services of summons issued by Criminal court has not been dealt with in any rules or orders under the British Indian Laws and is regulated by local customs and arrangements to serve the summons received from other States by providing a clause for it in the Extradition treaties. Clause 13 of Col. Wyliee's rules, which are generally followed in Rajputana and Central India for extradition purposes, also contain the provision that when witnesses residing in one State are required by another State to give evidence in a Criminal case, they should be sent atonce.

Section 73 of the Cr. P. C. regulates the procedure for the services of summons issued by a court for service at any place outside its jurisdiction. But, such place must obviously be one to which the Cr. P. C. applies.

Generally it is found that all such summons are sent to the highest officers of the State from where they are sent to the courts concerned for service. This procedure is unnecessarily dilatory and cumbersome. It is much better that the courts issuing summons in one State should send the

summons directly to the court of the other State from which the service of the summons is desired. Summons from British Indian Districts should also be sent directly to the State courts concerned. In fixing the dates for the attendance, reasonable time should be allowed so that the service of the summons could conveniently be made before the date fixed for hearing. Bengal High Court Circular on the subject also provides that the "Bhatta" must accompany the summons when practical, and that the summoning of such witnesses for the preliminary enquiries should be avoided unless indispensable.

In order to facilitate the speedy disposal of criminal cases, it is essential that arrangements should be made whereever they do not already exist for direct and quick service of summons with the neighbouring British Indian Districts as well as between the States inter-se. The practice of demanding "Bhatta" in advance need not be strictly adhered to.

RETROCESSION OF CIVIL & CRIMINAL JURISDICTION OVER RAILWAY LANDS IN INDIAN STATES.

THE question of retrocession of Civil and Criminal jurisdiction over Railway lands in Indian States has been under consideration for about 20 years now. During preliminary meetings between the Representatives of the Indian States and the Government of India Officers, it was considered necessary to exclude from consideration Sections of Railway, which form a part of important through-routes and lines of strategical importance. Further examination showed that there are in fact very few sections available for the experiment. In the note prepared by the Railway Board on this question, it was observed that an unbroken section of line, 80 miles in length, in one State should be the minimum length suitable for a Police Station. There are apparently only two sections, one of 87 miles in Mewar territory, and one of 80 miles in Gwalior territory suitable for the experiment, and in the circumstances, it was argued, that it was unlikely that the experiment if carried out would have the value that has been anticipated. It was also said

on behalf of the Government of India that there was little to be gained by agreeing to retrocession in a very few unimportant cases and thereby inviting a number of claims which could not be agreed to.

An important judicial decision on this point was made in the cases of Mahommed Yusuffuddin V, Queen Empress (24 I.A., p. 137). The facts of the case were as follows:— 'On a warrant issued by the Magistrate of Simla, Mr. Crawford,, Railway Magistrate arrested Mahommed Yusuffuddin, a resident of the Hyderabad State at Sirgampatti station on the Nizam's Railway. On the matter going up to the Privy Council, Lord Halsbury held that the territory on which the appellant was arrested was Nizam's territory and that authority to arrest in such territory must, therefore, be derived from the Nizam; that from 'a perusal of the correspondence that passed on the subject between the Nizam and the Government of India, it is clear that the only jurisdiction conferred is a criminal and civil jurisdiction along the line ofthe Railway, as is the case on other lines running through independent States and that this does not mean that any person is open to criminal prosecution for an offence alleged to have been committed elsewhere"

This matter was also dealt with by the Butler Committee which treated separately the Railways falling under the two following categories:—

(*a*) Railways of Strategic importance and important non-strategic Railways.

(*b*) Other Railways.

The Butler Committee held that all measures required for the proper working of the arterial Railways should be concentrated in the hands of one authority and that Civil and Criminal jurisdiction should be continuous and unbroken; but they recommended that the States should be given back all jurisdiction criminal and civil on all other Railways on the following terms which had already been agreed to between the Standing Committee of the Chamber of Princes and the Representatives of the Political and Railway Departments of the Government of India:—

(*a*) That the State or a Company of individuals authorised by the State, is either the owner of a Railway or at least has a substantial interest in it and works it.

(*b*) That the State possesses proper Machinery for the administration of justice.

(*c*) That adequate control over the working and maintenance of the line is retained, either by the application of an enactment and Rules similar to Indian Railway Act and the Rules made thereunder, or otherwise.

(*d*) That the State will grant permission for such inspection of the line by Government Railways

officials, as may be considered necessary. On behalf of the State it was contended that :—

1 So far as the main and through lines are concerned, the excercise of criminal and civil jurisdiction in the areas ceded for Railway purposes should as a rule be limited to the purposes for which the cession was made.

2. For the application of this principle it is necessary to settle the minimum jurisdiction, if any, required for railway purposes and to arrange for the retrocession to the States of all jurisdiction over that minimum.

3. The Officers or the Government of India should work out the minimum jurisdiction required.

4. The list of non-strategic sections should be examined with the object of selecting suitable lines for complete experimental Retrocession. The minimum unbroken length in a State should be 50 miles only.

After mutual discussions in 1932, the Government of India agreed to remove the grievances of the Indian States arising out of the existing administrative arrangements for the exercise of jurisdiction in Railway lands situated within their territories by taking suitable action as mentioned below :—

(I) Persons against whom the State Police are desirous of proceeding for offence (whether extraditable or otherwise) alleged to have been committed in

State territory and who are found on Railway lands within the State, will be handed over to them without extradition formalities and that sedition against the Darbar to whom sovereignty over any Railway area belongs, when committed within that railway area should be made an offence punishable by the court exercising jurisdiction in that area. Steps will also be taken to prohibit the entry of newspapers etc. into the Railway territory of a State which had prohibited them.

(II) Steps will be taken to retrocede "bare sovereignty robbed of all its attributes" to such States as have ceded lands in full sovereignty for railway purposes.

(III) A certificate issued by a specified State Official to a State subject for carrying arms within the railway land situated within the territory of the State concerned shall have the effect of a licence granted under the Rules. The specified State Official shall be one holding a position of responsiblity corresponding to that of a District Magistrate in British India, and the certificate granted by such official shall exempt the holder from prosecution under the Arms Act only for journeys which are performed wholly within the borders of the State concerned and which no where cross the borders of that State.

The prolonged discussions on this subject

between the Princes and the Government of India have greatly clarified the position and have revealed a complete agreement on the following main points. These are the fundamental points underlying this problem and the agreement already reached on these points promises its constructive and acceptable solution.

(*a*) That the whole aim and object underlying the policy of cession of jurisdiction over Railway lands to the British Government is not based on any political consideration but is concerned with the detection and check of crime and to facilitate the smooth working of the Railways.

(*b*) That the object underlying this policy should be achieved through retention by the British Government of minimum jurisdiction required for this purpose, and that the remaining jurisdiction should be retroceded to the State concerned.

(*c*) That the retrocession of Criminal and Civil Jurisdiction of any State shall be conditional on its possessing proper machinery for administration of justice.

(*d*) That adequate control over the working and maintenance of the line should be retained either through the application by the Darbar concerned of an enactment and rules similar to the Indian Railway Act and the Rules made thereunder or otherwise

(*e*) That the States will grant permission for

such inspection of the line by Government Railway officials as may be necessary.

(*f*) That the Imperial Government can rely on the co-operation of the Indian States as may be necessary in case of grave public emergency or in the strategic and military interests of the Empire.

Very recently the following main points have been urged in this connection on behalf of the State:—

(1) The extension of the scope of the Foreign and Political Department Notification No. 34 I. B. dated the 14th January, 1937 so as to include within its terms all State servants who are non-State subjects, any offenders who could be tried by the State courts if they had not escaped into a Railway lands and persons domiciled in a State.

(2) The surrender of the accused without extradition formalities when the offence of sedition is committed by a non-State subject on Railway land within State territory. It is reported that in several cases jurisdiction over railway lands had recently been transferred from Governors to Political authorities and in some cases it has been retroceded to the Durbars themselves as a temporary measure. Section 124 A of the Indian Penal Code as applied to Railway lands in Indian States had been amended so as to make sedition against a State in which Railway lands were situated an offence punishable under the section.

(3) State Officers or State subjects should be permitted to carry arms on railway lands on the authority of a licence issued by the State authorities.

(4) The application of State Income Tax Law on Railway servants residing within railway lands in State territories, it may be practicable after further mutual discussion to give a credit to the State concerned from the proceeds of income which is realised under the British Indian Income Tax Law.

(5) The realisation or refund of excise duty on liquor and the income accruing to the Railway Stations from the sale of Tobacco and Biris or contracts for sale on the Stations within State territories.

(6) In the case of railway land in which compensation had been obtained by the State concerned, the position of railway authorities with regard to the non-railway revenue should be similar to that of other proprietors of land particularly with regard to such matters as excise or toddy in which the state may hold a monopoly.

The adjustment of Criminal and Civil jurisdiction on Railway lands in the Indian States has been claimed on behalf of the Indian States since more than two decades now and some acceptable solution should be arrived at in order to meet the just demands of the Indian States, as the Princes feel that the denial of such rights amounts to a negation of

Political law and a defiance of express guarantees given to most States which is positively harmful to the control of crime in the States.

The main objections on behalf of the Government of India are the difficulties of divided jurisdiction and the weaknesses inherent in divided control, due to constant breaks of territory. The elimination of these objections is no doubt desirable, but they cannot, and should, not be allowed to justify inroads on the internal autonomy of the States beyond the minimum limit indispensable for securing smooth working of the Railways and the control of crime. Constant breaks of territory even without cession of jurisdiction are not necessarily incompatible with efficient railway administration and control of crime. The continental railways in Europe traverse many independent States which retain complete jurisdiction in their territories. They cross many frontiers, and considering their speed they do so at certain place almost as frequently as some of our most intersected interstatal railways. And yet the continental system does not appear to suffer from any serious inefficiency in railway administration or control of crime. The most equitable method, therefore, of dealing with this problem which also accords with the spirit of the agreement so far reached, would be, to retrocede to the States concerned the whole of the criminal and Police jurisdiction over Railway

lands except that portion of its whose retrocession is shown to be incompatible with the smooth working of the railways.

There are certain sections of railways over which full and exclusive jurisdiction was once enjoyed by the Indian States concerned. It is reported to have worked successfully for years without any occasion for complaint or protest and all the States were made to part with that jurisdiction. It is contended that with regard to such sections of railways there is not the slightest justification for postponing its retrocession till the experiments elsewhere prove successful.

It may, however, be pointed out that recent developments such as the entry of Jathas from the railway lands into the State territories have given this question a new complexion which renders out of date any objection or limitation which may have been cited against such retrocession or jurisdiction in the past, and make the need for retrocession both urgent and vital.

The practice with regard to Railway jurisdiction is not unanimous. The jurisdiction on the Bangalore-Mysore line originally rested with the Mysore Government but when the line was extended to Haribar, that jurisdiction was taken over. In regard to the Bowringpet-Kolar line, full jurisdiction rested in the Government but in 1915, it was

retroceded to the Darbar. In regard to the main line also Mysore enjoys certain important concessions e. g. the right to remove sandalwood from railway lands. In regard to Indore the practice with regard to extradition is different from that which is followed in other states owing to an original stipulation that offenders escaping to the railway lands will be surrendered to the State.

Recently retrocession or adjustment of jurisdiction is reported to have taken place in the case of certain railways within the territories of Travancore, Hyderabad, Mysore, Bikaner and Jodhpur.

Similarly with regard to the financial and fiscal aspect of the question the existing position in the States is not alike although non-railway revenue made by railway authorities from lands ceded free of cost for railway purpose only is given to all the States after deduction of collection charges.

Income tax on railway servants residing within the railway territories is levied by a few States such as Kashmir, Kotah, Raigarh and Patna

Excise duty on liquors sold on railway premises within State territory is realised by or refunded to a few States such as Gwalior, Kotah, Ratlam and Sirohi.

State Municipal rules are applied to railway settlements within the State territory to a few States only such as Gwalior.

ARMS RULES

THE Indian Arms Act, XI of 1878, and the Indian Arms Rules, 1924 and the Schedules attached thereto are in the main the consolidation of the law which was previously in force with such improvements in points of detail as the experience of the working of the Act of 1860 had shown to be desirable. The Indian Arms Rules of 1924 have again been considerably amended in matters of detail by the following notifications of the Government of India..... .. ... Government of India Home Department Notification No. 106/1/37 dated the 24th March, 1938, Government of India Home Department Notification No. 21/48/36 dated the 25th July, 1938, Government of India Home Department Notification No 106/1/37 dated 14th November, 1938, Government of India Home Department Notification No. 21/50/37 dated 22nd February, 1939 and Home Department (Police) No. 21-24-41 dated 7th June, 1941.

The Act has to be read in conjunction with the rules and the Schedules along with the amendments. An attempt has been made here to bring together in brief and simple language free from legal techni-

calities the rights, privilages or duties of subjects, officials, and Rulers of Indian States.

U/S 4 of the Indian Arms Act, the word 'Arms" is intended to include fire-arms, bayonets, swords, daggers, spearheads, bows and arrows, also cannon and part of arms, and machinery for manufacturing arms. The word " fire-arms " only means arms that are fired by means of gun-powder or other explosives.

An old fashioned muzzle loading gun-barrel in good condition and with the touch-hole in good order is a 'fire-arm' within the meaning of Section 14. Fire-arms also include parts of fire-arms.

There is no exhaustive definition in the Act of the expression "arms". Where the circumstances of a case show that a weapon or instrument is carried for the purpose of offence or defence and not as an article for domestic or agricultural utility, there is no reason why such weapon or instrument should not be held to fall within the category of "arms". Whether in a particular instance an instrument is a fire-arm or not is a question to be determined according to the facts of each case and the circumstance that it is in an unserviceable condition is not sufficient to take it out of the category of "Fire-Arms".

Section 27 of the Indian Arms Act empowers the Governor-General in Council to exempt any persons by name or in virtue of his office or any classes

of person from the operation of any prohibitions or directions contained in the Indian Arms Act. A list of the persons and classes of persons so exempted will be found in Schedule I of the Indian Arms Rules 1924. There are, however, the following classes of persons also whose position is more or less analogous to that of exemptees.....

(*a*) Public servants in possession of arms carried as part of their prescribed equipments are U/S. (1) (*b*) of the Arms Act not subject to the Arms Act in respect of such arms.

(*b*) Persons to whom licences have been granted free of fee and valid for life.

(*c*) certain other persons who under rule 46 (8) of the Indian Arms Act read with Schedule 7 are not required to pay fees for licence in respect of specified arms.

The classes of persons who are mentioned in the first column of Schedule I to the Arms Rules 1924 are exempted in respect of the Arms and ammunition described in the 2nd column when carried or possessed for their own personal use from such prohibitions and directions contained in the Act as are indicated in the 4th column, subject to the proviso and restrictions entered in the 3rd column. It will be noticed that, under the 2nd column of Schedule I, no exemption has been conferred in respect of certain arms and appliances which include cannon, machinery for the manufacture of arms or

ammunition, and Rifles, Muskets, Pistols and Revolvers of the prohibited bores not lawfully imported into British India. With the exception of persons named in entries Nos. (7) and (9) of the Schedule, the exemption is from the operation of Sections 13, 14 and 15 only, that is to say, the exempted persons generally are exempted from the necessity for taking out licences for possessing and carrying arms and from the observance of the conditions which attach to such licences. In the majority of cases, however, the exemption is subject to certain restrictions which are or may be imposed under the 3rd column of Schedule I.

Under clause (d) of entry (1) in Schedule I to the Indian Arms Rules 1924, servants of a Ruling Prince or Chief having a salute of guns when carrying arms for, but not accompanying their masters, are exempted from the operations of certain provisions of the Arms Act, subject to the condition that their names are specified in a general authorisation to be issued by the Political Officer concerned to the Prince or Chief. (For and Pol Dept letter No. F. 363-G/29 dated the 7th October, 1930.)

Under entries No. 2 (b) and (c) of Schedule I such members of the families of Ruling Princes or Chiefs and such nobles, officials, or accredited agents of a State in India as may be designated for exemption by the Political Officer concerned are exempted

from the directions and prohibitions contained in Section 13 to 15 of the Act in respect of the Arms and ammunition specified in 2nd column of Schedule I subject to such restrictions as may be imposed. The number of persons exempted by the Political Officers concerned under entry 2 (b) generally vary in different States, for example, the number of persons so exempted in *Rampur, Benares* and Tehri-Garhwal States are 45, 23 and 10 respectively. It is, therefore, felt that an informal arrangement may be evolved under which the Political Officer concerned may privately intimate to the State authorities the number of persons from amongst officials and non-officials who are likely to be exempted from the arms rules so that the States may not be placed in the awkward position of making recommendations which are not accepted readily. Such exemptions when once made in favour of any particular persons should also not be withdrawn without previous reference to the State concerned particularly when no prima facie reasons exist for such action.

In the exercise of the power conferred by proviso in the 3rd column against entry No. 2 (d) of schedule I to impose conditions on the exemption, the Provincial Governments have generally directed that State officials travelling in the Provinces on duty should be furnished with passes issued by the State. It should be, however, clearly understood

that exempted persons cannot be obliged to provide themselves with such State passes or certificates and *that the object of issuing them is to afford to their* holders a ready means of proving their identity if their right to carry arms should be challenged in another province in which they may be unknown. It would still be open to persons claiming to have been exempted to prove the fact of exemption or to establish their identity by any means which they might choose to adopt (H. D. No. 27/963/975 dated the 12th July 1881.)

For the purpose of entry No. 2 (d) of Schedule I. it is also a question of fact for determination according to the circumstances of each case whether or not an official of a State is passing through British India on duty. An armed guard travelling as an escort to a wedding party from a State would generally not be considered to be on duty, and so would not be exempted under this entry. In such cases a license for going around on a journey through British India can be had from the Political Officer of the State concerned by a person residing in a State in India U/S. 33 of Indian Arms Rules 1924. But a similar guard travelling in British India in charge of State treasure would be exempted.

The attention of all exempted persons is drawn to the Indian Arms Rules in accordance with *which all persons so exempted shall register*

in such a manner as the Central Government may prescribe any fire-arms or ammunition for the same in respect of which they are exempted from the operation of any provision of the Act. But persons including in entry 1 (b) and entry (2) of Schedule I of the Indian Arms Rules, 1924 are not required to register the fire-arms in respect of which they are exempt. (H. D. Notification No F/2 LXXVI dated the 16th March 1925).

Section I (b) of the Indian Arms Act, 1878, exempts from the prohibitions and directions contained in the Act a public servant bearing or possessing arms or ammunition in the course of his duty as such public servant. A public servant is entitled to the benefits of this section only in respect of such arms as he is required to bear in the course of his public duty. These include only arms supplied by Government and arms which though the private property of an officer, from part of his sanctioned equipment, Police Officers of and above the rank of sub-Inspector are authorised to possess one revolver as part of their equipment They are, therefore, exempted U/S 1 (b) of the Arms Act from the obligation to take out a licence in respect of a weapon so possessed.

In order that a uniform policy may be followed in respect of grant of licences for the possession, purchase and export of arms and ammunition by

Ruling Princes and Chiefs, and their subjects in the States and in British India, Political Officers should consult Durbars and explain and secure their co-operation in all matters of policy (For. and Pol. Dept. letter No. F. 363-G/29 dated the 18th January 1930).

Export and import:—Under rule 39 of the Indian Arms Rules, no licence may be granted for the export of arms, ammunition or stores to a State in India without the previous sanction of the Political Agent unless the arms ammunition or stores are consigned to, and for the personal use of, any of the persons enumerated in the proviso to rule 39 (1) (a) of the Indian Arms Rules. In such cases the previous sanction of the Political Officer is not necessary, and no separate licence may be taken for the transport or import of privately owned arms or ammunition by a person authorised to possess them (Section 6 of the Act and 22 of the Arms Rules.)

Under Rule 22 the transport of arms ammunitions or Military Stores is prohibited for the whole of British India except under a licence. But this rule does not apply to arms and ammunition transported personally or as personal luggage in reasonable quantities for his own use by any person lawfully entitled to possess arms or go armed.

Under section 6 of the Act no person shall bring or take into or out of British India any arm

ammunition or Military Stores except under a licence. This prohibition does not extend to arms or ammunition imported or exported in reasonable quantities for his own use, by any person lawfully entitled to possess such arms or ammunition. Any person "lawfully entitled to possess arms" can import into British India or take out of the country with him or send out any arms or ammunition without any special licence, provided these are of reasonable quantity, are for his personal use and their possession is covered either by a licence or by exemption. The word" Lawfully entitled to possess" apply to persons licensed according to law to possess arms, as well as to persons exempted from the operation of Sections 13 to 14 of the Act. (H. D. letter No. 1862 dated the 14th December, 1880.)

But under rule 39 (1) (a) of the Indian Arms Rules no licence may be granted for the export of arms, ammunition or stores to a State in India without the previous sanction of the Political Agent unless the arms, ammunition or Stores are consigned to, and for the personal use of, any of the persons enumerated in the proviso to Rule 39 (1) (a) of the Indian Arms Rules. This apparently very much limits the wider provision of Section 6 of the Arms Act.

No licence is required for the export of swords and swords-sticks to Indian States (For. and Pol. Dept letter No F. 149-G dated the 4th June 1929)

Under section 1 (b) of the Act, no licence is necessary for the export of arms, ammunition or Stores issued to Indian States from British Arsenals under the orders of Government. Each consignment, however, should be covered by a certificate signed by the Officer Incharge of the Arsenal, to the effect that it is exported by order of Government under Section 1 (b) of the Act. All applications sent to arsenals for the supply of arms, ammunition or stores for the use of State Military or Police forces should state the degree of urgency, the address of the consignee, the route by which the consignment should be despatched and whether it should be despatched by goods or passenger train.

It is a matter of the greatest importance that effectual measures should be taken to prevent arms exported for retail sale in an Indian State from getting into the hands of persons unfit to possess such weapons.

With this end in view, Draft Model Rules are appended (appendix F) which may usefully be adopted by the Indian States with necessary modifications to suit local conditions

These rules have been limited to fire-arms only as it does not appear necessary to provide for the registration of or to impose other restriction to import or export on any "arms" other than fire-arms. In some Provinces in British India arms like swords,

bayonets, daggers, spear-heads, bows and arrows etc. have been excluded from the operation of prohibitions and directions contained in the Act under Schedule 2 of the Indian Arms Rule 1924. Section 15 of the Arms Act is also not extended to many British Indian Provinces.

APPENDIX A.

Commissions of Enquiry

No. 426—R.

Government of India
Foreign and Political Department

RESOLUTION

Simla, the 29th October, 1920.

The Government of India have had under consideration the question of giving effect to the recommendations contained in paragraph 309 of the Report on Indian Constitutional Reforms and are pleased to prescribe the following procedure for dealing with cases of the nature therein referred to :—

When in the opinion of the Governor-General the question arises of depriving a Ruler of an important State temporarily or permanently of any of the rights, dignities, powers or privileges, to which he as a Ruler is entitled or of debarring from the succession the heir apparent or any other member of the family of such Ruler, who according to the law and customs of his State is entitled to succeed the Governor-General will appoint a Commission of Enquiry to investigate the facts of the case and to offer advice unless such Ruler desires that a Commission shall not be appointed.

The composition of the Commission will ordinarily include—

(*a*) A judicial Officer not lower in rank than a Judge of a Chartered High Court of Judicature in British India.

(*b*) Four persons of high status of whom not less than two will be Ruling Princes.

The names of the persons proposed as member of the Commission, will be communicated to the persons whose conduct is the subject of enquiry, and he will have the right to objecting without grounds stated to the appointment of any person as a Commissioner If objection is so taken, the place of such person will be supplied by another person nominated by the Governor-General, but in that case there shall be no further right of objection.

The Governor-General will convey to the Commission an Order of reference stating the matter referred for enquiry. The Ruler or other person, whose conduct is the subject of enquiry, will be entitled to represent his case before the Commission by Counsel or otherwise. The Commission after hearing the evidence placed before them by direction of the Governor-General and the representation of the Ruler or person, whose conduct is under enquiry, will make their recommendations to the Governor-General in a report. The report will set forth the findings of the Commissioners on the facts

relevant to the matter referred for their consideration and their recommendations and will be accompanied by a copy of the proceedings and documents placed before the commission.

The proceedings will ordinarily be treated as secret; but if the Ruler or person, whose conduct is under enquiry, desires publication, the Government of India may publish the proceedings unless there are special reasons to the contrary.

If the Government of India disagree with the findings of the Commission, the matter will be referred to His Majesty's Secretary of the State for decision. The Government of India will communicate to the Ruler or person, whose conduct is under enquiry, their reasons for disagreeing with the recommendations of the Commission and invite him to make a representation. This representation will accompany the reference of the Government of India to the Secretary of State; when the reference comes before the Secretary of State the Ruler or person will be entitled to present an appeal to the Secretary of State.

Where the Government of India agree with the recommendations of the Commission, their decision will be communicated to the Ruler or person whose conduct is under enquiry. The Ruler or person concerned will be at liberty to present an appeal to the Secretary of State against the decision

of the Government of India.

The cost of the Commission, other than Counsel's fees, will be borne by the Government of India

Nothing in this resolution will be held to affect the discretion of the Government of India or of a local Government to take such immediate action as the circumstances may require, in the case of grave danger to the public safety.

The resolution shall be applicable to the case of all States, the Rulers of which are entitled to membership of the Chamber of Princes in their own right; it is open to the Governor-General to apply the procedure laid down in this resolution to other States also not included in the above category, in cases where it may be deemed advisable to do so

APPENDIX B.

Draft Extradition Agreement.

Whereas it is the desire of.....State and of .....State to facilitate the reciprocal extradition of offenders from one State to the other, it is hereby agreed as follows:—

1. The offences and their punishable attempts and abetments which shall be recognised as ordinarily justifying the demands to surrender are named in the accompanying Schedules I & II.

2. (*a*) Perpetrators of offences named in Schedule II annexed hereunto when pursued from one State to the other immediately after the commission of an offence, or proclaimed offenders (Vide Sub-clause (b) of this Clause) when pursued from one State to the other may be arrested by the pursuing party without the intervention of the local police provided that such party includes at least one Police Officer not below the rank of a Sub-Inspector and that the assistance of the local Police cannot be obtained without prejudicing the prospect of the arrest.

(*b*) The expression "Proclaimed Offender" shall mean any person proclaimed as an offender by any Court or authority established in either State in respect of offences mentioned in Schedule II, pro-

vided that the fact of a person being a proclaimed offender has previously been intimated to the State into whose territories he is pursued and is required to be arrested.

3. A person arrested under the preceding clause shall forthwith be conveyed together with the property, if any, relating to the offence, to the nearest Police Station of the State in which the arrest has been made and shall be handed over to the local police officer in charge, who shall take him into custody along with the property, if any, and give a receipt.

4. In other cases where offenders escape from one State to another, arrest should be made through the local Police, who are bound to give immediate attention to requisitions for assistance in arresting or searching for such offenders.

5. Either State shall surrender any person upon a requisition duly made by the other State in whose territory he is alleged to have committed the offence. The requisition shall be accompanied with such prima facie evidence of the offence as, according to law of the State in which the accused person is found, would justify his apprehension and surrender. When there is no doubt regarding the criminality of the person accused, extradition should be granted without delay or superfluous formalities.

6. Prima facie evidence referred to in the

preceding clause should be furnished as soon as possible after arrest and should not be delayed for more than 2 months except under special circumstances which should be explained to the State in which the accused has been arrested.

7. If sufficient prima facie evidence is not furnished within 2 months after the date of the arrest of the offender, or the State in which the arrest took place is not satisfied with the explanation of the cause of delay, the said State may release the accused forthwith or may take any other action which is deemed fit.

8. If the person claimed by one State should also be claimed by other States on account of other crimes committed within their respective jurisdiction his extradition should be granted to the State whose claim is earliest in date unless such claim is waived.

9. When a person is surrendered in pursuance of this Agreement, he shall not be triable for any offence committed prior to the surrender other than the offence for which the surrender is granted unless he has had an opportunity of returning to the surrendering State and fresh extradition proceedings are taken against him.

10. The extradition shall not take place if :

(*a*) subsequent to the commission of the crime the case has been finally dropped by the Police or the Government, or

(*b*) after the institution of the prosecution, the case is withdrawn, or

(*c*) in the case of a conviction, pardon has been granted.

11. A person undergoing a sentence in either State may be surrendered in pursuance of this Agreement on condition that such person be resurrendered to the Extraditing State on the termination of his trial.

Provided that no such condition shall be deemed to prevent or postpone the execution of a sentence of death lawfully passed.

12. If a person accused of an extraditable offence is acquitted and an appeal is filed against such an acquittal the other State shall surrender him to the State in which the offence was tried without further extradition proceedings, on the certificate of the Appellate Court.

13. Either State may ask for any information with regard to any particular accused surrendered by them, which shall be supplied forthwith.

14. All articles seized which were in possession of the person to be surrendered at the time of his apprehension and any article that may prove the crime or offence, shall be made over when the extradition takes place.

15. All expenses incurred in the feeding and detention of a fugitive offender as well as in the

transit of the accused and property relating to the offence with which he is charged shall be paid by the State in which the accused is arrested and the property is secured, and no amount shall be debited to the State requesting extradition.

16. Every person who is accused or convicted of an extraditable offence committed within the jurisdiction of either State and escapes from custody, shall be dealt with as if he has committed an extraditable offence.

17. When a witness of one State attends a Court of another State to give evidence in a criminal case when summoned by the latter State, he shall not be tried for giving false evidence or for any other offence alleged to have been committed prior to his being so summoned, unless the witness has had the chance of going back to the State from which he came.

Provided that such witness may be tried for any offence which he may commit subsequent to his arrival in the summoning State.

18. Notwithstanding anything contained in this agreement, no Tazimi Sardar, Jagirdar (limited to the blood relations of the Ruler) and officials (getting Rs.————p. m. or more) of either State shall be extradited. If, however, the State in which the extraditable offence has been committed desires that a trial shall be held in such a case, prima

facie evidence shall be sent to the State to which the offender belongs, so that he may be duly tried by the latter State. But if such a privileged person commits an offence in the State to which he belongs and takes shelter in another State, the latter State shall surrender him on receipt of prima facie evidence.

19. Notwithstanding anything contained in the foregoing clauses of this Agreement a registered member of a Criminal Tribe shall be surrendered on a formal requisition only for the offences under the Criminal Tribes Act 1911.

20. This Agrement shall come into force from .....and shall be terminable on six months' written notice by either State.

SCHEDULE I.

EXTRADITION OFFENCES.

(The Sections referred to are the Sections of the Indian Penal Code).

Sections 131 to 136, 138 to 140, 212, 213, 215, 216, 216A, 224, 225, 231 to 263A, 302 to 318 323 to 333, 344, 347, 348, 363 to 369, 371, 372, 373, 376, 377, 379 to 404, 406 to 420, 431, 432, 433, 435 to 440, 448, 449 to 462, 465 to 477A, 489A to 489D. "Desertion from any unit of Regular State Forces" Offences under the Criminal Tribes Act 1911.

SCHEDULE II.

List of Sections of the Indian Penal Code:—

302, 303, 304, 307, 308, 311, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, and 402.

APPENDIX C.

Local Extradition Rules

1. Definitions.

(*a*) "Offence" includes any act wheresoever committed which would, if committed within the State, constitute an offence.

(*b*) "Extradition Offence" means any such offence as is described as extraditable in the Extradition Treaties.

(*c*) "Legal Processes" mean and include summonses, Notices, Proclaimations, Orders, Commissions, and Interogatories in Criminal, Civil and Revenue Cases; but do not include warrants or attachment proceedings.

(*d*) "Extradition Officer" means any Officer appointed by this State to deal with matters relating to the extradition of offenders from and to this State.

(*e*) "Prima Facie Evidence" means evidence which taken together as it stands, supplies reasonable grounds for the presumption that the accused has committed the offence, for which his surrender is asked.

NOTE—The evidence for the purposes of extradition must be the evidence recorded before a Magistrate. Copies of Police reports and diaries shall not by themselves constitute prima facie evidence.

2. If it appears to any Police Officer that a person within the local limits of his jurisdiction is accused or suspected of having committed an extraditable offence and that such person may lawfully be surrendered he may arrest such person without any order from a Magistrate in pursuance of the provisions of Section 54, Clause seventh, of the Criminal Procedure Code. Such arrested persons shall forthwith be produced before a Magistrate within the local limits of whose jurisdiction such arrest was made, who may order the detention of the accused in custody, or may take any other action which is deemed fit.

3. If it appears to any Magistrate of the 1st. or 2nd. class that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in some other State and that such person may be lawfully surrendered to such State, the Magistrate may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence was committed within the local limits of his jurisdiction.

4. When a request for the arrest of a person is received from another State on the ground that an extraditable offence has been committed or is supposed to have been committed by such person

who has taken refuge or is living in this State, the person shall forthwith be arrested and detained in custody. Such person or property, if any, shall be surrendered on receipt of prima facie evidence which is, in the opinion of Extradition Officer, sufficient to justify such surrender.

5 When a person is arrested under Rule 1 and 2 information to that effect shall forthwith be sent to the authorities concerned.

6 When a person has been arrested under these Rules he shall be given an opportunity of making his statement before his surrender is ordered.

7. In the case of a person arrested or detained the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner, as if such person was accused of committing the offence in this State

8 Where a person undergoing a sentence in this State is surrendered to another State his sentence shall be deemed to be suspended until the date of his re-surrender when it shall revive and have effect for the unexpired portion thereof provided that the person charged or imprisoned under the Security Sections (107-110) of the Criminal Procedure shall not come within the purview of this Section.

9. Any person arrested or detained shall not, except with the special sanction of the Government

of this State, be detained for more than two months.

10. Formalties which should ordinarily be observed in respect of pursuit of accused persons by Police Officers of another State into the territory of this State, should not be allowed to militate in any way against the offer of immediate and effective assistance in the apprehension of the fugitives. Assistance should always be given to the Officers of other States in the investigation of cases as also in the apprehension or detention of offenders pending the grant of Extradition.

11. Person undergoing a sentence of imprisonment in this State should be surrendered to another State only on the express condition that the accused is returned to this State for the completion of his sentence immediately on the termination of his trial.

12. (*a*) Legal process received for service in this State shall be served free of charges.

(*b*) The service shall be direct between Court and Court.

13. Whenever any commission is received from a foreign Court in a criminal matter for obtaining the testimony of any witness residing in this State, such commission may be executed according to the provisions of the Code of Civil Procedure for the time being in force with respect to commissions.

14. If an agreement has been made to that

effect with any State, there shall be reciprocal recognition of previous convictions for the purposes of Section 75 I. P. C.

15. No house shall be searched except through or with the written permission of the local police and any stolen property found in the course of the search shall be taken possession of by the local police, who shall give a receipt for it.

Requisition for search should be accompanied with a detailed list of the property involved.

16. Notwithstanding anything contained in the preceding section, the Zenana quarters of a Pardah Nashin lady shall not be searched except in accordance with the local rules and procedure in force.

17. When a witness residing in one State is required by a court of another State to give evidence in a criminal case, his attendance shall be enforced through the State in which he resides.

18. The Durbar may from time to time make rules relating to the procedure and practice to be observed in extradition matters.

APPENDIX D

In the matter of Savings Bank/Cash Certificates Account No .... particularised below standing in the name of .... (herein-after called the deceased above named) *at/registered at..... .... Post Office within the State of .....

WHEREAS the deceased above named died on the day of .....19 intestate and without heirs and according to the law and custom of the State of .. ..the sum of Rs. .. .. (Rupees ... .) only *being the amount to the credit of the deceased above named the value of Government Securities purchased by the value of Cash Certificates (particularised below) in the Savings Bank Account aforesaid deceased above named through the Savings Bank Account aforesaid standing in the name of the deceased above named .....has escheated to the State NOW IT IS DECLARED AND NOTIFIED that payment of

the said sum to the Treasury of the State of .....
....will *operate as a complete discharge* to the Governor-General-in-Council and the State of ....will thereafter be responsible for adverse claims if any in respect of the said sum.

Dated the ..... day of ....19 .....
.... *(Proper Officer of the State).*

(Countersignature by the Political Agent for purposes of authentication)

*Strike out the portions not required.

PARTICULARS OF CASH CERTIFICATES

No .....Denomination. ..... Date of issue.

APPENDIX E.

List of Indian States whose Officers have been authorised to certify documents under Section 79 of the Indian Evidence Act.

1. Alwar.
2. Banswara.
3. Baria.
4. Baroda.
5. Bhavnagar.
6. Bikaner.
7. Bundi.
8. Chamba.
9. Chatarpur.
10. Datia
11. Dharampur.
12. Dharangadhra.
13. Dhrol.
14. Dewas J B.
15. Gondal.
16. Gwalior.
17. Indore.
18. Jaipur.
19. Jhalawar.
20. Jind
21. Karauli.
22. Kashmir.
23. Kolhapur.
24. Kotah.
25. Maler Kotla.
26. Nabha.
27. Palitana.
28. Patiala.
29 Rewa.
30 Sangli.
31. Savantwadi.
32. Tehri-Garhwal.
33. Tonk.
34. Vankanar
35. Radhanpur.
36. Benares.
37 Rampur.
38. Vijaynagar.
39. Patna
40 Dungarpur.
41. Kishangarh.

APPENDIX F.

Draft Arms Rules

Preamble

In supercession of all existing notifications, orders Robkars relating to the control of arms and ammunition in the State, the Durbar are pleased to promulgate the following Rules.

1. These Rules shall be called the Arms Rules, and shall come into force at once.

Definition.

2. In these Rules unless there is anything repugnant to the subject or context :—

(*1*) The Arms Rules should refer to fire-arms only.

(2) 'Ammunition' includes explosives or fulminating material, percussion caps, fuses, friction-tubes and machinery for manufacturing ammunition.

Possession.

3. (*1*) No person shall possess any arms or ammunition within the State unless these have been registered with the Police and a certificate of registration has been obtained therefor as provided herein.

(2) Every person in possession of arms and ammunition, at the time these rules

come into effect, shall have his arms and ammunition registered within one month from the date of the publication of these rules.

Registration

4. (*a*) Every Officer Incharge of a Police Station shall maintain a Register in form 'A' (Appended to these rules) for the registration of arms and ammunition in his circle.

(*b*) When any arms or ammunition are presented for registration, the Officer Incharge shall enter them in the Register and shall submit the duplicate to the Superintendent of Police and issue the triplicate copy to the owner as a certificate of registration.

(*c*) Every certificate of registration issued under the preceding sub-rule shall remain valid for a period of one year from the date of its issue, unless renewed by an authority competent to grant an original certificate. The procedure for renewals shall be the same as for registration and all such renewals shall be reported by the Officer Incharge of the Police Station to the Head of the Police Department through the Superintendent of Police as soon as they are made.

Imports

5. No arms or ammunition shall be imported into the State without the previous sanction of the Political minister.

Exports

6 (*a*) No arms or ammunition shall be exported to any place outside the State unless sanction of the Political minister has been previously obtained.

(*b*) A report of such export shall be made to the Officer Incharge of the Police Station within seven days of the export and the certificate of registration surrendered for cancellation.

Transport

7. (*1*) There shall be no hindrance to any person in possession of arms or ammunition passing through the State Territory, provided he has a valid permit signed by an authority competent to issue such permits under the law in force in the place from which he started.

Always, provided, that, if sufficient grounds exist for suspecting that the arms or ammunition are being carried for an illegal purpose or by an undesirable person, any Police Officer, not below the rank of a Sub-Inspector, may, after recording in writing the grounds for suspicion, disarm him and report the action to the Head of the Police Department through the Superin-

tendent of Police within 24 hours.

(2) On receiving a report as provided by sub-rule (1) the Head of the Police Department shall at once proceed to make necessary enquiries and make recommendations to the Political minister.

Manufacture Conversion Sale etc.

8. No person shall manufacture, convert, sell or keep for sale any arms or ammunition except under a license in form 'B' (appended to these Rules) granted to him by the Political Minister on payment of an annual fee of Rs .....and in the manner and to the extent permitted by the license.

Provided that nothing herein contained shall prevent any person from selling or disposing of any arms or ammunition in his lawful possession to any person who is a bonafide resident of the State, not residing in British India, and who is not prohibited from possessing the same.

Provided that every person selling or disposing of any arms or ammunition, shall immediately notify the Officer Incharge of the Police Station where the said arms or ammunition stand registered, of the sale or gift with full particulars and the address of the new possessor.

Census.

9. The Durbar may at any time, by notification in the State Gazette, direct a census to be taken of all arms in any local area or the whole State, and empower any person by name or by virtue of his office to take such census. On the issue of such notification all persons possessing arms and ammunition shall furnish such information as may be required by the person so empowered and shall also produce before him the arms in their possession.

Search and Seizure.

10 When any Police Officer not below the rank of Sub-Inspector has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any unregistered arms or ammunition such officer may cause a search to be made in his presence of the house or premises in which he has reason to believe that the arms or ammunition may be found, provided that where respectable persons are concerned, the orders of the Durbar shall be obtained before search

All such unregistered arms and ammunition may be seized and forfeited to the State.

Loss and etc.

11. (*1*) When any person finds that any arms or ammunition in his possession

have been removed by theft or otherwise, he shall immediately send written information to the Police Station concerned giving details of the arms or ammunition and the circumstances of the loss.

(2) On receipt of information under sub-rule (1), the Police Officer shall at once take steps to notify the loss in the State Gazette and submit a report to the Head of the Police Department through the Superintendent of Police.

(3) Any person finding arms or ammunition not belonging to him shall at once report his find at the nearest Police Station and produce the arms or ammunition for deposit. All arms and ammunition so deposited shall be notified in the State Gazette, and if they remain unclaimed for a period exceeding six months, shall be disposed of under orders of the Political Minister.

Information of offences to be given

12. Any person aware of the commission of an offence punishable under these rules shall report this to the nearest Police Station.

Prohibiting Possession of Arms in Times of Emergency

13. When the Durbar consider it necessary owing to an emergency to prohibit the possession of arms and ammunition

by any class of State subject or in any part of the State, a Notification shall be issued in the State Gazette and, on the publication of such notification, it shall be incumbent on all persons possessing arms or ammunition in that part of the State to produce them before the Officer Incharge of the nearest Police Station where they shall be carefully looked after until the emergency has passed.

Cancellation of Certificates of Registration.

14. Notwithstanding anything contained in these rules, the Head of the Police Department on being satisfied that any person in possession of arms or ammunition is likely to use them in an unlawful manner, may cancel the certificate of registration and take such *arms or ammunition* in the custody of the Police until the owner or possessor secures their disposal to some other person.

Penalties for breach of Rules.

15. (*1*) If any person in possession of arms and ammunition,

(*a*) fails to have the arms or ammunition registered at the nearest Police Station, or

(*b*) fails to produce the arms or ammunition for inspection, or

(*c*) refuses to produce on demand by

a Police Officer not below the rank of Sub-Inspector his certificate of registration, or

(*d*) fails to give due notice of any import export or transfer of arms or ammunition, or

(*e*) fails to report the loss, find, etc. of arms or ammunition,

he shall be punished on conviction by a Magistrate with imprisonment of either description not exceeding 6 months or with a fine not exceeding Rs. 500/- or with both.

(*2*) If any person fails to give the necessary information required by rule 12 of the commission of any offence under these rules, he shall be punishable on conviction by a Magistrate, with imprisonment of either description not exceeding 3 months or with fine not exceeding Rs. 500/- or with both.

(*3*) All other breach of these rules covered by sub-rules (1) and (2) shall be punishable with imprisonment of either description not exceeding 3 months or with fine not exceeding Rs. 500/- or with both.

16. Offences against these Rules or other Rules enacted hereafter shall be triable by a Magistrate of the first class or

second class, and shall be cognizable, bailable and not compoundable.

17. Notwithstanding anything herein contained the Durbar may by notification publish in the State Gazette, exempt any person by name or in virtue of his office or any class of persons from the operation of any prohibition or direction contained in these Rules.

18. The Durbar may from time to time by notification in the State Gazette frame further rules with regard to any matter referred to in these Rules and provide penalties for breach of such rules

FORM A

(See Rule 4 (a))

Original Duplicate Triplicate (Certificate of Registration)

Name of Police Station .....

1	Serial No.		
2	Date of Registration.		
3	Name, Father's name & full address of the owner		
4	Type	Description of arms and ammunition	
5	Number, bore, Chambers and Maker's name.		
6	Quantity of ammunition		
7	Signature of the owner		
8	Date of which the validity of the Registration certificate expires		
9	Date of renewal		
10	Signature of Police Officer		
11	Remarks		

FORM B

(*See Rule 8*)

Fee ....Rupees

License to manufacture, convert, sell or keep for sale, arms or ammunition.

Serial number of license	Name description and residence of licensee, and of duly authorised agent or agents, if any.	Description and number of arms.		Description and quantity of ammunition.	
		To be manufactured or converted.	To be sold or kept for sale.	To be manufactured.	To be sold or kept for sale.

The of 19 .

SEAL

Signature of the Authority granting the license.

NOTE—The holder of this license is prohibited from selling fire-arms to a person other than a bonafide State subject, who resides within the State and who is not prohibited from possessing the same